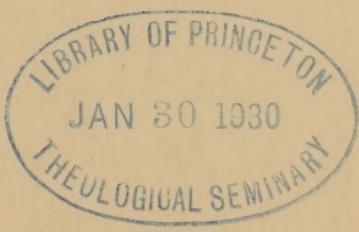


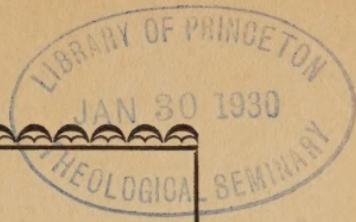
THE INSIDE OF PROHIBITION

MABEL WALKER WILLEBRANDT



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The **Inside of Prohibition**

By
MABEL WALKER WILLEBRANDT



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Dedication

This volume is dedicated to the millions of men and women throughout the nation who have as their ideals such old-fashioned things as respect for and obedience to the Constitution, faithful and honest discharge of duty by public officials, and individual sacrifice for the public good; those millions who have the hardihood to face even the discouraging facts, and go on fighting for what they believe to be right.

M. W. W.

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PREFACE

I REALIZE that in the minds of most readers no statement of fact or opinion by a writer on a highly controversial subject can rise higher than its source. In other words, no one who believes that I am a fanatic or bigot is likely to give much weight to the statements contained in this volume.

Not for personal satisfaction, therefore, or in defense of my actions, political or official, but for the purpose of enabling the reader to determine for himself whether it is worth while to give credence to what I have to say, I make this prefatory statement.

On Monday, August 29, 1921, I received from the White House, then occupied by President Warren Harding, my appointment as Assistant Attorney General of the United States. On that day I took the oath of office prescribed by law to

"support and defend the Constitution of the United States of America against all enemies foreign or domestic, and bear it true faith and allegiance without mental reservation or evasion."

To me was assigned supervision throughout the United States of cases growing out of the most

controversial part of the Constitution and the statutes enacted thereunder. I have striven to perform that duty "without mental reservation or evasion." Prohibition enforcement, however, was not the only responsibility. Throughout the eight years of my tenure of office more than half of my time was occupied with supervising Income, Estate and Corporation Tax cases, and other legal work in no way connected with the Eighteenth Amendment.

I state these facts in order that no reader may say to himself, "She has been so exclusively occupied with prohibition that she has lost the sense of its proportion to other affairs of our national life."

Before I took office in 1921, I never had been actively connected with the prohibition movement. I am now, but was not then a teetotaler. While it was legal to do so, I had liquor in my own home in California, and used it, in moderation, of course.

I have been portrayed as a bigot who incited Protestants to vote against Governor Smith, a Catholic, in the national election of 1928 because of his religious belief. Such accusations hurt. Although I have been engaged in politics long enough to expect and, on campaign issues, even to welcome attack, no decent person likes to be falsely accused of ugly intolerant motives.

Perhaps the best reply to the accusation is a simple statement of the facts which gave rise to it. In an Appendix to this volume are the speeches I made during the last national campaign, which brought about the charge that I was attacking Governor Smith because of his religion.

The address at Springfield, Ohio, which came to be known as "the speech to the Methodists" was, as a matter of fact, not made in a church; it contained no exhortation for churches to "go into politics"; it pointed out the fact that prohibition for which Protestant churches had consistently fought for fifty years did not belong in politics and had never been there, but had been dragged into the political arena by Governor Smith's telegram repudiating his party platform respecting the Eighteenth Amendment. The speech urged all those who had fought to secure prohibition, now to work to retain it and defend it *against* political attack. The fact further is, that that now famous speech contained no attack on any religion, or any church, or any candidate because of his religion or church, nor did it have a statement containing the remotest suspicion of such a thing. Furthermore I made it at the request of the Republican National Committee—and not as a free-lance. In fact, I wired the Committee asking twice to be excused from speak-

ing there. But I was urged by the Republican National Committee in two telegrams (which I still have in my files) to fill the engagement as Governor Smith had made prohibition so important an issue of the campaign. The week before the speech was delivered, every word of it was carefully edited at Headquarters by James Francis Burke, a Catholic, and counsel of the Republican National Committee.

When in the heat of the campaign I was attacked and ridiculed as a "free-lance" and an "embarrassment" to the Republican National Committee, I had to choose whether to disclose the telegrams and actually embarrass the campaign by controversy within party ranks, which I think Governor Smith cleverly hoped would happen, or to keep still and take punishment. It seemed to me good sportsmanship dictated the latter course. As a result, a false picture was portrayed in cartoons and campaign gibes. Merely in justice, therefore, to the important subject dealt with in this volume do I mention the campaign and include the actual speeches in the Appendix.

This book is written neither as a justification of my own activities nor as a means of gratifying enmity against any person.

I make this statement because, to tell the truth

straightforwardly, a mention of some names is necessary. When that occurs personal motives are usually ascribed by disaffected men and newspapers.

Neither is this book written to please those who advocate the Eighteenth Amendment or those who oppose it.

It is not written because of any feeling on my part that I alone possess the solution of a great public problem.

It is written because I believe it to be a duty to raise the level of public information on subjects of civic importance. I know of no way to do that except for those who have been charged with a governmental responsibility to speak out frankly about it. The people have a right to expect that from their officials who accept a public trust.

M. W. W.

THE INSIDE OF PROHIBITION

CHAPTER I

THE PROBLEMS OF PROHIBITION

MORE than ten years have elapsed since prohibition became a part of the basic law of the land. No one who is intellectually honest will deny that there has not yet been effective, nation-wide enforcement. Nor will it be denied that prohibition enforcement remains the chief and in fact the only real political issue of the whole nation. No political, economic or moral issue has so engrossed and divided all the people of America as the prohibition problem, except the issue of slavery.

There were and are millions of people who do not have the slightest conception of, or interest in, the tariff, important as that subject really is to every citizen. There are millions of people who take only small notice of the great problem of international disarmament and the attempt to secure nations against war. There are millions of good citizens who are totally oblivious to the problem of national immigration policies.

But ninety-nine out of one hundred people, whether children in grade or high school, or men and women in the vigorous or declining years of life, have definite and aggressive views on the wisdom or folly of laws prohibiting the manufacture and sale of intoxicating liquor, and the methods used to bring about enforcement of such laws.

The Eighteenth Amendment to the United States Constitution, prohibiting the manufacture, sale, transportation, importation or exportation of intoxicating liquor, and giving concurrent power to Congress and the several states to enforce that prohibition, has been ratified by forty-six of the states. Only two states—Rhode Island and Connecticut—have withheld ratification. Nevertheless, neither the federal nor state laws enacted under this constitutional authority have been effectively enforced, but on the contrary there has been throughout the country strong and persistent opposition during a period of more than ten years.

When will prohibition “agitation” end? What is the future of prohibition enforcement? These are questions that naturally present themselves to all who are interested in the subject—and who is there *not* in some way interested in prohibition?

It is no more possible to avoid prohibition discussion than to avoid breathing. In every news-

paper every day of the year, on every street corner where people stop to talk, at every afternoon tea party, in every social gathering of any kind involving any class of society, one subject recurs time after time and is of universal interest: Prohibition.

The realization finally has come both to those favoring and to those opposed that the problem of enforcement of the Eighteenth Amendment will not "solve itself." The drys long consoled themselves with the thought that eventually those who opposed the prohibition laws would see the futility of continued agitation, and the arm of the Federal Government would be strengthened to the point of real effectiveness in law enforcement. Those who fought the organized liquor traffic before the Eighteenth Amendment was ratified deluded themselves, when that came to pass, with the belief that their task was finished. The law prohibited the manufacture and sale of beverage alcohol anywhere in the United States; *ergo* the liquor traffic was ended! Instead of relying on continued education of the mass of the people to the folly of alcoholic indulgence and continuing the efforts that had been going on for years to strengthen and make effective local, county and municipal laws and their enforcement, all reliance after ratification was placed upon the so-called "all-powerful Federal Government." The

United States of America was the "big boy" to do the job of ending the liquor traffic, in the minds of people who had worked long and effectively in their own communities to close breweries, distilleries and saloons. That is fallacious.

The Federal Government can and should control or stamp out the major sources of supply. It should control the issuance and use of alcohol permits so that illegitimate streams would not flow from legitimate permit sources. It should strengthen border patrol and Coast Guard so as to stamp out smuggling. It should keep the evidence-gathering force trained and deserving of the highest respect. It should fearlessly prosecute all cases. The Federal Government's record in all these things is not such as to produce exaggerated pride in one who has been a part of it. It is not the hopeless failure some claim, but it falls far short of what it could have been with more united courage, sincerity and hard work.

In my judgment, the indifferent character of the job done thus far has contributed greatly to the general public discouragement over the wisdom of prohibition.

The wets, on the other hand, have long deluded themselves with a vague formless belief that there is some way "around" the Constitution and Vol-

stead law; that it is just simply impossible to make people stop drinking who do not want to stop drinking; and that, "after while," if agitation is continued long enough, the law will drop into innocuous desuetude.

But after ten years, it is obvious that the prohibition situation will not be submerged or subside; neither will it solve itself,—because it involves a fundamental conflict in principle, one which can not be compromised. For many years before the Civil War the State rights issues were dealt with by a series of "compromises." But instead of controversies ending, they increased. So it is with prohibition. Either a majority of the people of this nation and more than three-fourths of the states have the right and actual power to deal with the liquor evil by national prohibition of the sale of intoxicants, or they do not. For the past ten years, both the wets and the drys have shut their eyes to the real facts in the situation. The basic facts which must be recognized and dealt with as realities by either wets or drys who hope to solve the problem of prohibition, are:

1. That although less intoxicating liquor is being made, sold and consumed than prior to the adoption of the Eighteenth Amendment, nevertheless an immense quantity of liquor is still being

marketed, and enforcement of the prohibition laws falls far short of effectiveness.

2. Repeal of the Eighteenth Amendment and the Volstead law, or material modification that would permit government distribution of liquor or sale of "light wines and beer," is practically impossible. A bare majority of drys in one or the other branch of the legislatures of thirteen states can block constitutional repeal or modification.

3. The majority of citizens, taking the country as a whole, are still in favor of prohibition enforcement. The proof of this lies in the fact that Congress remains overwhelmingly dry in its votes, whatever the personal habits of the members may be. A congressman who comes up for re-election once every two years can not afford to be wrong about the wet or dry sentiment of his district. *He knows.*

There is nothing unusual or startling about the length of time that the prohibition problem has been "in the air." Any one who has made a study of the history of government knows that real public opinion on any matter of importance is of very slow formation. There is a long process of boiling and seething and frothing before the mass thinking takes definite form. We have as a recent example of this the farm-relief situation. Agi-

tation for laws particularly for the benefit of the agricultural population of the country began not five or ten years ago, but more than a score of years ago. There were commissions of inquiry, endless investigations, reports of committees, the famous Roosevelt "country life" commission, and many determined but futile attempts to pass ambitious bills in the interest of the farming populace. But not until 1929 was action taken on a broad and comprehensive scale. Similarly, the nation temporized with the slavery issue for more than a score of years before the question was finally settled.

The prohibition situation as it actually is may be said, in truth, to have been shrouded during the last ten years in a dense fog or miasma of uninformed opinion, prejudice and personal rancor. The mists are now being dispelled, slowly it is true but none the less certainly. Public hysteria is being displaced by a genuine public demand for the truth. For that reason I shall state as far as possible the facts as they have been revealed to me in eight years spent in the effort to enforce the prohibition laws.

I shall endeavor to answer, concretely and practically, some of the questions in which many people of America are vitally interested. I shall not deal largely with theories of government, what course might have been taken instead of the Eighteenth

Amendment, or hypothetical methods of enforcing law, but with concrete situations that now exist, suggesting wherever I can the actual methods that I believe would make law enforcement effective.

I shall not discuss the wisdom of adopting prohibition as a national policy. Such an argument is not timely. The essential fact stands out that embedded in the Constitution of the United States is the Eighteenth Amendment:

“Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

“Section 2. The Congress and the several *States shall have concurrent power to enforce this article by appropriate legislation.*” (Italics mine.)

Congress has enacted certain laws to give effect to that part of the Constitution. So have most of the states. The arguments for and against the Amendment as a national policy can be found elsewhere. I propose to leave those arguments to others and to devote myself to answering such questions as these:

Is the prohibition amendment or law unenforceable?

Is there a legal substitute for prohibition of all intoxicating liquors?

Who is responsible for non-enforcement of the prohibition laws?

Are the best methods being employed in the enforcement of prohibition? If not, why not?

What is the prospect for prohibition enforcement hereafter? Is the effort rightly termed a "noble experiment" by President Hoover doomed to failure?

Is there any cure for the defects of prohibition enforcement?

On the answers of the great body of American citizens to these questions within the next few years depends the ultimate fate of the Eighteenth Amendment. When the people are sure whether or not we can actually have prohibition enforcement, then they will decide whether or not there shall continue to be a prohibition amendment and prohibition laws. We have the amendment and the laws now. We have not yet had effective enforcement.

CHAPTER II

HOW WET IS DRY AMERICA?

ONE reason the prohibition situation has not been dealt with effectively is that when there is a breakdown of any one of the many units of enforcement checkmate results. Success requires coordinated action from county, city, state and national officers. That requires pressure from an informed and active public. And on this subject people of every community are of a thousand minds. They accept wild and unreliable stories as facts.

An illustration of the mass of misinformation in current circulation, which serves to hinder and delay a sane view of the liquor problem, is contained in a letter I received recently. I have not changed it, except to delete unessential names in order to prevent business or other embarrassment to their owners:

“Philadelphia, Pa.

“My dear Mrs. Willebrandt:

“For several days I have been reading with interest your articles which appeared in the *Evening Bulletin* on the subject of prohibition enforcement. I have been greatly impressed with their

fairness and impartiality. I feel that I can view the subject with an open mind, as I have been a moderate drinker myself.

"You refer to the frequent exaggeration on the part of the wets. I think the champion exhibit in this line comes from Philadelphia.

"Some time ago at a meeting of a board of directors in Philadelphia, a business man who is ordinarily keen and shrewd, said that he had heard that tremendous numbers of drunks were being taken weekly to the — Hospital and that owing to the poisonous nature of the liquor a large percentage of deaths ensued; that the previous Monday morning there had been sixty dead bodies removed by the undertaker. He had heard this on apparently good authority and repeated it as credible. The yarn was so preposterous, however, that I thought it was worth while taking the trouble to run it down, so I addressed a communication to the superintendent of the Hospital, asking if it were true. I received the following letter in reply:

"Dear Sir:

"In reply to yours of recent issue, state that we have had no deaths from alcoholism in two years. We looked up our records and upon investigation found that on October 10th, 1927, a man died of benzine poisoning which was first thought to be alcoholism.

"Very respectfully,
" — Hospital."

"Just think, a drop of from sixty to nothing! Is it any wonder that a fair-minded person despairs of ever obtaining the uncolored facts? In this respect, your own articles should be most helpful.

"Yours very truly,
" — — — "

It is very difficult to enter into a discussion of prohibition facts or opinions divorced from the inherent prejudices most people have on one side or the other of the question. Let us, in fairness to our government which *must* wrestle with this problem, try at least to do so calmly. Let us foot up the credit and debit side of the national ledger and see if in many respects the good does not offset the disorder, and where it does not let us consider dispassionately what can be done about it.

Not long ago, a magazine of general circulation sent a writer through the length and breadth of the country with instructions to determine how wet is dry America. Apparently the writer had no difficulty in finding liquid refreshments, with alcoholic content, in almost all sections of the United States.

To many people this was conclusive proof that prohibition is a failure. They overlooked the fact that if the same writer had been sent in search of alcoholic stimulant in the days before national prohibition, he would have had a far easier task. I do not know of a time in the history of this or any other country, either under national or state prohibition, local or county option, governmental sale, or under rigid regulation of the open saloon, when it has not been possible to obtain intoxicating

liquors at almost any hour of the day or night, either in rural districts, the smaller towns or the large cities.

Certainly it would be ridiculous for me to deny that liquor is sold in large and small quantities throughout the country, and that practically any one who possesses simultaneously a thirst and as much as a quarter or a half-dollar can partly assuage that thirst. That this of itself proves that prohibition has been and is a failure, I do deny.

Let us briefly compare the old situation with that which exists under prohibition. When the Eighteenth Amendment took effect, this country possessed 507 distilleries with an annual output of about 286,000,000 gallons (1,144,000,000 quarts) of distilled spirits of various kinds. There were 1,217 breweries with an output of hundreds of millions of gallons of beer, 503 warehouses containing practically 200,000,000 gallons (800,000,000 quarts) of intoxicating liquor, and last but not least, 178,000 open saloons. In addition, of course, there were scores of thousands of "blind pigs" selling liquor of every kind—good, bad and indifferent—not only in supposedly dry towns and local option sections, but in the wettest of the wet spots.

Now what is the situation?

Liquor is being sold and is obtainable, as I have

said, throughout the country. But, viewing it calmly, I think it is very doubtful whether as much drinking is done as appears to be done. That seems like a contradictory statement. However it is certainly true that in the old days when a man took a drink, either in his home, in his club or in a saloon, that fact was no novelty or "news" either to him, his neighbors or the newspapers. But now let a man, woman, girl or boy do very much drinking and the fact becomes one of almost general public comment. At country clubs they boast; in the churches they deplore; in political forums they accuse; but everywhere they talk! The inevitable result is exaggeration of the basic fact. My public experience has made me believe that a psychological maxim as accurate as an algebraic formula is that a fact, plus feeling, plus repetition, equals great exaggeration and unreliable conclusion. And that's about the course of most prohibition discussion to-day among both wets and drys.

It is regarded as so smart and expensive in some circles that we might almost say a bell rings or a whistle blows every time drinks are passed. In the old days, a man drank a glass of beer or whisky, or several of them, all as a matter of course.

To-day we are like little Jack Horner pulling out cocktail shakers with, "Oh, what a smart boy am

I!" The advertising and exaggerated importance, then, which is often all unconsciously given to every drink now consumed, distort its real value in making an honest estimate of how wet America really is.

This is especially true with reference to "society drinking." There never was a time in the old days when liquor was not freely consumed in the club houses frequented by the well-to-do. But my personal opinion is that there is no greater amount of drinking now by men and women of leisure and wealth. Few do it from habit. More do it for "show." In nearly every country club will be found a coterie who attract attention by their large and flagrantly conducted parties. I was in a near-by city just a short time ago. My host said he couldn't take me to a big country club party because it was to become "noisy" and my presence would embarrass his friends. He hastened to add that although this was a group of the "best" social set, the majority of the club members didn't stage such spectacularly wet parties. Nevertheless, it is the performance of a small sensation-seeking group that attracts most attention and convinces many people that all the country is wetter than ever before.

People so often ask, "But if prohibition is any success at all, why is it that arrests for drunkenness

in many cities have increased in recent years?" I remember Senator Reed, of Missouri, made a stirring speech about that before he left the Senate. Undoubtedly increased arrests for drunkenness indicate a bad symptom. But it is misleading to assume that they prove any increase in drinking.

I well remember that when I was public defender in the police courts of Los Angeles the "drunks" picked up on the streets at night and from the saloons at closing time were treated quite differently from the way in which they are treated in that city and practically every other city in the United States to-day. Now, they are placed under formal arrest, charged with illegal possession or sale of liquor or the violation of some city ordinance. Then, they were regarded as objects of pity, and placed in the "drunk tank." In the early morning they were haled into what was known as "sunrise court." After admonition by the judge or payment of a five-dollar police "lodging fee" they were, if sobered, turned out in time to reach their place of business without loss of a working day. I have seen as many as one hundred and forty men and women passed through sunrise court in one morning. Only when their offense was repeated so as to become habitual were they formally charged, arraigned and tried.

From 1911 to 1914 while attending law school I had to wait late at night, when the law library closed, on the corner of First and Main Streets in Los Angeles for the interurban car to my suburban home. Indelibly impressed on my mind is the fact that scarcely a night—never a week—went by without several drunken men reeling past me from the five saloons near that corner. No one noticed them. Now one such incident would cause headlines. No, I am sure no adequate, reliable conclusions can be drawn as to the wetness of the United States to-day by comparing police blotters for drunkenness before and since prohibition.

This letter from a state Judge is pertinent here:

"This county has one hundred thousand people. This city has probably thirty thousand. Before national prohibition, our police arrested between five and six hundred yearly and brought them before the mayor for drunkenness. Since the law was passed, they can not find more than one hundred and thirty-five or fifty yearly. Three lines of street-cars run from here to other towns. The conductors say that since prohibition they have no more trouble with night drunks who formerly gave unlimited trouble. Before prohibition there was no protest by the rich or well-to-do against the state liquor laws, as applied or not applied in the large cities—as they knew they stood in no danger of arrest for violating the state's liquor laws unless they appeared drunk on the street. As ever, the

cities are the problem and only fearless, honest, efficient enforcement by the federal officials will avail. Bad as conditions may still be, prohibition counted by results attained has been a marvelous success. Heads of factories tell me that their men show up Monday mornings now, whereas before prohibition they expected many to be absent because of drinking."

This comment from a man who served many years as state prosecuting attorney, as well as on the bench, may be regarded as an accurate estimate of the effect of national prohibition in an industrial center where the saloon business formerly thrived.

Traveling men and others who have business contacts frequently say, "Why, in the old days, when we were engaged in a deal, we passed out or were handed a cigar, and now we are taken into a private office and a bottle of liquor is pulled out of a file case or the bottom drawer as the method of breaking the ice and producing congeniality!"

No one will deny, of course, that there was so-called business drinking in the old days. This treating in private offices is only the modern form of the old, "Draw up, boys, to the old brass rail. Drinks on the house!" For those who have had real experience with private liquor treating to-day and the saloon treating of yesterday there will be

little doubt that the modern form is only dampness compared to a deluge.

That in certain groups boys and girls are more liable to drink than formerly, I also do not deny. It is serious and repulsive. But, like country club drinking, that condition affects only a small proportion of all the young men and women who attend high schools and colleges, or are engaged in industry. It touches those who drive their own roadsters and can imitate their defiant elders. The same psychology that brings about "society drinking" has created drinking among "society's children." It satisfies the desire to be noticed, as youth has ever desired to do what is daring. No one places the blame for increased cigarette smoking on the prohibition law—and that increase probably is an expression of the same spirit of revolt which produces the increase of drinking among certain classes of young people. I am not lightly passing over drinking among youth; I am just wondering if these vibrant youth of 1929 would not be doing it anyway, whether their liquor came from licensed saloons or illicit stills?

Against these many disconcerting phases of prevalent drinking to-day we must in fairness balance the evidence of decrease in the amount of liquor consumed by the millions of working people

of the country. Our great industrialists, including Ford, Edison, Durant and Alfred P. Sloan, Jr., of the General Motors Company, have spoken definitely and repeatedly as to the economic and industrial benefits of lessened drinking among the members of their organizations since prohibition became the law. Practically all economists agree that there have been real benefits to industry and to people who work for a living, through prohibition. Recently, for instance, Mr. Henry Ford has been subjected to the ridicule of the wet metropolitan press because in the course of an article published in *Pictorial Review* he made these statements:

"For myself, if booze ever comes back to the United States I am through with manufacturing. I would not be bothered with the problem of handling over two hundred thousand men and trying to pay them wages which the saloons would take away from them. I wouldn't be interested in putting automobiles into the hands of a generation soggy with drink.

"With booze in control we can count on only two or three effective days' work a week in the factory—and that would destroy the short day and the five-day week which sober industry has introduced. When men drank two or three days a week, industry had to have a ten- or twelve-hour day and six- or seven-day week. With sobriety the working man can have an eight-hour day and a

five-day week with the same or greater pay. . . .

"I would not be able to build a car that will run two hundred thousand miles if booze were around, because I wouldn't have accurate workmen, and without accurate workmen I could not get the necessary precision in work, even with machinery, because more people are making the machinery to make the car to-day than make the car itself. . . . To make those machines requires that the men increase their skill. They become specialists at making machinery, and then advance and become designers.

"With drink they could not do it, because booze destroys brain-power. It causes inaccuracy, and when men do poor work they lose interest, which is the greatest calamity that can happen."

Mr. Ford's critics joined in a vociferous chorus that Mr. Ford may know how to make automobiles but he doesn't know what he is talking about when he discusses liquor and its effects. They point to the fact that recently he has opened manufacturing plants in Ireland and other foreign nations where liquor is readily available.

Within the space limitations of his magazine article, it was impossible, of course, for Mr. Ford to give proof in support of his conclusions. Such proof is abundant, however. In an article by Mr. S. S. McClure in *McClure's Magazine* for January, 1926, the findings of the Medical Research Council, which made a thorough study of the effect of small

quantities of alcohol in relation to performance of muscular acts and simple mental processes, are cited.

The entire article is well worth reading, containing as it does the results of tests by reputable scientists as to the effects of alcoholic indulgence. I quote here, however, only a small part of this scientific data, in substantiation of Mr. Ford's conclusions which came not from the laboratory but from his actual experience in his own large manufacturing operations:

"Experiments designed for the special purpose of testing the effects of alcohol on the accurate coordination of nervous and muscular activity which is necessary for skilled movement have been carried out by Vernon and by McDougall and Smith. The result showed that more mistakes were invariably made after a sufficient dose of alcohol had been taken. The dose might be as small as 10 cubic centimeters if taken some hours after a meal, though 30 cubic centimeters taken with a meal had only a very slight action. The dose of 30 cubic centimeters of alcohol retarded the reflex speed by 5.9 per cent. taking the average from four of the men; it decreased the eye-lid movements extent by 10.7 per cent. taking the average measure from five of the men.

"Miles found that 40 minutes after a dose of 30 cubic centimeters of alcohol the speed of the movement was decreased by more than 12 per cent. on an average.

"The evidence summarized in the preceding section shows that the execution of skilled movements tends to be impaired by alcohol.

"Guillery remarked that at no stage of the action of any dose of alcohol were the eye-ball movements found to be strengthened or rendered quicker.

"Similarly, Dodd and Benedict found that a dose of 45 cubic centimeters of alcohol measurably impaired the speed of starting the movement of turning the eyes toward a fresh object; in short the speed of directing the gaze.

"A dose of 45 cubic centimeters of alcohol was found, an hour and a half after it had been taken, to increase the delay (average of all six men) by 15 per cent.

"Similar experiments were carried out by Miles, who gave his subject a dose of 30 cubic centimeters of alcohol. He found that the speed of the movement was decreased by 13 per cent. one and one-half hours after the dose was taken, and remained less than normal for a further one and three-fourths hours.

"Admiral Lord Jellicoe said: 'As regards straight shooting, it is every one's experience that abstinence is necessary for efficiency. By careful and prolonged tests the shooting efficiency of the men was proved to be 30 per cent. worse after the rum ration than before it.'"

The final summary of all the experiments made by Miles, of the Carnegie Institution, Washington, D. C., contains these conclusions:

"The whole qualitative picture is one of decreased human efficiency as a quickly following result from the ingestion of this pharmaco-dynamic substance. There is no longer room for doubt in reference to the toxic action of alcoholic beverages as weak as 2.75 per cent. by weight."

As to the situation in foreign nations, I received a letter recently from one of the leading patent lawyers of Washington, a man who is accustomed to speak with scientific accuracy, from which I quote two sentences:

"I have been abroad a great many times, and we have never had, either before or since prohibition, such terrible conditions as exist in Great Britain. It has been admitted again and again that one of the serious problems in Great Britain is combatting the drink habit and that if this could be checked it would go a long way toward aiding the serious conditions resulting from non-employment."

Perhaps the comparison of conditions drawn from his manufacturing experience in America and abroad may well be an additional reason for the emphasis of Mr. Ford's statement.

In the *McClure* article attention was called to the fact that Great Britain's drink bill in the year 1923 was £307,500,000 or more than the amount of the interest on its national debt! Lord Leverhulme,

one of England's foremost industrialists was quoted to the effect that if England would adopt prohibition it would thereby save enough in five years to pay its indebtedness to the United States. Added testimony comes from one of the most eminent of American economists and business statisticians, Roger W. Babson:

"The great improvement in business which followed the war was very largely the result of the influence of prohibition and the salvage of our former waste of two billion dollars or more each year due to the liquor traffic. I know of no other way to account for the great impetus in home building, the tremendous number of new automobiles purchased, the larger volume of department store sales, accompanied at the same time by a continued swelling of savings bank deposits, when the tendency of business as a whole should normally have been downward."

There is, frankly, no positive mathematical reply possible to the query of how wet America is. Too many of us have answered the question according to our own hopes or desires and then cited some fact that in a distorted setting seemed to furnish proof of our prejudice, like a city's statistics on arrests for drunkenness. The honest answer lies in fairly weighing the disorderly evidences of the present "easy drinking" against balancing indica-

tions of gain, like the passing of former "blue Mondays" in industry. Even after doing that the result is not mathematical. It is only opinion. But it can be a fair and calm opinion.

We can not forget that so long as a large number of people have a thirst for alcoholic stimulants and other people have a desire to "make big money quick" liquor will be produced and consumed, in spite of laws or officers of the law. But neither have we a right to forget that, rebel as we may, we *have* prohibition as a national political and legal policy. That is a present commanding fact that should influence all sincere thinking on the subject. It does no good to "rail" at the Constitution. It seems much more sensible to balance honestly the undoubted benefits; see where, with the agencies at hand, those benefits may be increased, and then take a philosopher's view of the outlook!

I doubt if any one really believes for the fraction of a moment that prohibition has not reduced, and very materially reduced, both the production and consumption of intoxicating liquors throughout the United States. It has, however, been more of an economic success than a legal success thus far.

CHAPTER III

THE BIG LEAK—"PERMIT ALCOHOL"

A CERTAIN amount of liquor distribution is inevitable and probably will remain with us until the millennium, but there is one source of liquor supply about which we have no right to assume a philosophic attitude, that is the *preventable* leak—the leak coming out from under the cloak of a government permit!

Methods of securing spirituous liquors with which to supply a thirsty populace are as ingenious as they are numerous. But my judgment, based upon eight years' enforcement experience, is that the greatest single source of liquor supply to-day is alcohol diverted illegally from concerns bearing the stamp of respectability in the form of a government permit. That judgment is confirmed by the opinion of many others who have been actively engaged in enforcement work. Most whisky and gin in circulation is synthetic—made in a back-yard garage from "cleaned" alcohol. Of course when it reaches the consumer it is in "antique" bottles, with fancy, imported-looking labels.

In the Bullifant case where a large number of regular retail patrons and Bullifant, who did a mail-order business from Philadelphia, were indicted, it was disclosed that one printing firm in a near-by state did thousands of dollars' worth of business yearly, furnishing "canceled" revenue stamps of a pre-war date, with which to adorn the bottles. It further appeared that a bottle manufacturing plant was filling a large monthly order for pinch bottles and other fancy antique shapes, with the trade-mark of old companies blown in the glass. The liquor with which these bottles were filled was a synthetic product made of specially denatured alcohol "cleaned" of the denaturant, colored and flavored, with "bead oil" added to give it the proper appearance of genuine age. This was a huge business, with some one hundred and fifty persons involved. The business had built up such "good will" that patrons not only included smaller retail distributors in three adjoining states, but several prominent men, one a banker who had bought considerable quantities from year to year, replenishing his pre-war cellar with a liquor he thought was a genuine import. After indictment most of the defendants came quietly into court and entered pleas of guilty, as a consequence of which the case had little public attention.

Some time ago a drug concern located in a sparsely populated town in Texas secured the release on permits for medicinal use of two hundred barrels of Jamaica ginger. Jamaica ginger is ninety per cent. alcohol. Two hundred *barrels* of it would take care of quite a sizable quantity of old-fashioned "tummy-aches"—many more, in fact, than would be likely to occur in a sparsely populated Texas community! The fact is obvious that such an immense quantity of "remedy" could not have any legitimate medicinal distribution by any one drug concern in any one small locality. I am confident government regulations can be so drawn as to *prevent* much of this type of violation instead of, as now, having to catch up with the offenders *after* the violation has occurred and the liquor has been consumed or sold.

Long before national prohibition the government authorized certain industries, such as paint factories, dye and chemical plants, manufacturers of perfume, et cetera, to withdraw tax-free alcohol for use in the preparation of such products. Under the existing law these industries are still permitted to withdraw alcohol with no restriction other than wholly inadequate regulations promulgated by the Treasury Department.

I maintain, and have maintained from my ex-

perience for years, that these regulations stop far short of the proper legal control necessary to prevent industrial alcohol and alcohol products made under permit from being the chief source of the illicit cocktail supply.

Let no one make the mistake of assuming that I would hamper, harass or even make unduly difficult the conduct of legitimate business which needs alcohol. But making regulations which govern its use, crisp, definite and as restrictive as the law permits, would *safeguard* legitimate business. It would hamper only the illegitimate concerns which use their permit as a bootleg protection. These latter practically all divert through the well-known ruse of shipments via "cover houses." A cover house is to the alcohol racketeer what a "fence" is to a thief. Let me illustrate. The dishonest permittee, under present regulations, is obliged only to show in his office a letter or some other form of confirmation of the sale of his products. Government inspectors take a list of the places where the permittee's files indicate that his products have gone.

Now I will cite an actual incident. Inspectors found that Permittee A shipped fifty thousand gallons of highly alcoholic "Carnation Perfume" to X. The inspectors went to see X. They asked,

"Did you receive fifty thousand gallons of Carnation Perfume from Permittee A?" X replied, "Yes." The inspectors looked about, but X had apparently only a rented room, a desk and a telephone. They asked to see where the fifty thousand gallons of Carnation Perfume were. X replied, "It's none of your — business where it is or what I have done with it!" And the tragic fact is, that as far as prohibition enforcement is concerned, *under the regulations as now written*, it wasn't any of the business of the inspectors to follow the product to its ultimate disposition. Nor can the inspectors who have plainly run into a lie return and charge the original Permittee A with dereliction of his duty or revoke his permit for sending fifty thousand gallons of Carnation Perfume to the fake establishment. It is such fake establishments with a set-up as ostensible consignees that are known as cover houses.

My opinion as a lawyer is that the regulations of the Treasury Department could be so drawn as to drive the cover houses practically out of business. To do that, however, would necessitate standing firm against tremendous pressure from the organized force of thousands of permittees with strong political influence. I know this from experience, because repeatedly in the last eight years

my office recommended to the Prohibition Division legal changes in their regulations.

I remember especially the fate of our recommendations made about two years ago. They were well received by Doctor Doran, Prohibition Commissioner and capable chemist, as well as by other Treasury officials; and we all practically agreed upon the details. But our puny legal beginnings of improvement in the regulations were exposed to the blighting political influence of the alcohol trade! Resolutions against the proposed changes, which I did not know had been seen by any one outside our two government departments, began to pour in. Lobbyists came to my office alleging that I was exerting a malignant influence over the Treasury Department! Drug associations, alcohol lobbyists, the patent-medicine group, all appeared and protested. Finally the regulations came out of the Prohibition Division *without the proposed changes*. The improvements had died a-borning! Instead of making them a part of the regulations or including them in the permit itself, some of them were printed on the *back* of the application blanks, where they looked well, but had no binding force.

Every permittee, when he makes application under law, asks the government for a privilege. It is a valuable privilege. He expects to make money

out of it. To get that privilege he enters into a contract with his government. In my legal judgment the government has a perfect right to require as a condition precedent to his receipt of this valuable privilege a considerable degree of diligence on his part as to where and to whom he will sell his products. There is no reason why before Permittee A, above mentioned, ships the fifty thousand gallons of Carnation Perfume with high alcohol content to X he should not by contract agree to let the government into the secret of X's request for the consignment. Why not have A, as a covenant condition to receiving his permit, make such reports or have the government regulations so provide?

In an attempt to prevent the diversion of alcohol, Treasury regulations prescribe that it be treated by certain formulæ of denaturants which are supposed to make it undrinkable. For some uses the alcohol must be what is termed "specially denatured," and for other uses "completely denatured." Little trouble comes from misuse of the latter, which is either nauseous or poisonous. Much of the specially denatured alcohol, however, is susceptible to manipulation whereby the denaturing products may be easily eliminated.

Crooked permittees naturally prefer the specially denatured type. Great pressure is exerted

on every administrator to approve more and more, and weaker and weaker, formulæ for specially denatured alcohol. Such a permit becomes an open door by which the permittee can enter a field of operations entirely outside the law. The policy of granting permit privileges has always been subject to so much political pressure that it has been marked by vacillation and puerility. It is true that while Dr. Orville Matthews was Commissioner Haynes' assistant, he frequently said definitely *no* to the multiplying applications. But by the close of General Andrews' régime permits and permittees had reached into higher mathematics!

A thing little apprehended but which forms a serious source of weakness in enforcement is that from year to year, under the constant request of politicians and lobbyists, not only the numbers of permits but the *amounts* of alcohol that each permittee can handle monthly have been greatly enlarged, and in many instances *made unlimited*.

Alcohol manufacturing plants are given the right to make unlimited quantities of alcohol. These plants are not bootlegging concerns by any means, but they are making all the alcohol that they can sell, and the amount that they can sell is increasing daily at an astonishing rate, far beyond the reasonable growth of businesses and trades that

need alcohol for legitimate purposes. Witness how some alcohol manufacturing stocks have sky-rocketed on the stock exchanges; note also the increased imports of sugar for alcohol factories.

Investment bankers, in advertising an issue of securities of an industrial alcohol company, included in their prospectus the following:

"Commercial alcohol plays a vital part as a solvent or base in industrial alchemy, and likewise in the manufacture of dyes, glass, ink, drugs, paint, perfumes, films and hundreds of other essential products, the demand for which is constantly increasing.

"Such is the background of the steadily expanding market for the commercial alcohol industry, which in the United States has grown from an annual production of 1,000,000 gallons in 1906 to more than 90,000,000 gallons in 1928."

Would it be unfair to the legitimate alcohol companies, anxious to keep a legitimate business, to restrict the amount they can manufacture to some figure reasonably near the actual needs of the country?

In my judgment one of the most important steps necessary to stop the largest source of liquor supply in the country to-day is for the Commerce Department or some other disinterested agency to ascertain how much alcohol really is needed to meet

actual industrial demands, and then to limit the issuance of permit privileges to amounts reasonably near such needs. Deliberately to grant almost unlimited privileges for alcohol manufacture necessitates increasing proportionately the number of inspectors to watch how the privileges are used. But no such increases in the inspection forces have been made. It would have been simpler to withhold these grants. To trace leaks has become almost impossible. The government's policy has been akin to pouring BB shot on the floor with one hand and trying to pick it up with the other!

I do not assert that all alcohol permittees are dishonest. Far from it. But the honest ones are put at a disadvantage by the weak-kneed governmental policy of too liberal issuance of permits. They should not be subjected to the competition of "fly-by-night" concerns. There is every economic reason why old firms with established reputations will use government privileges most fairly. They should be given first chance. The granting of permits to newly organized firms should be possible and proper only upon a showing of public need. Some lawyers in the Treasury Department have justified their "yes-yes" by saying that the prohibition law gives the commissioner no power to say no to applicants for permit privileges unless

they are found to be actually convicted lawbreakers. I do not so construe the law.

The only way any law can be made *certain* is to have the courts speak on it. I urged, literally begged, prohibition officials yearly since 1922 to *refuse* applications and let the applicants sue. I looked with eagerness to the chance thus to clarify the limits of discretionary powers of the Treasury Department in such matters. But the Prohibition Office said no so seldom that only *one* case raising the question of denial of a permit has reached the Supreme Court of the United States in the whole ten years of enforcement! It was the case of the Ma-King Products Company, 271 U. S. 479, where the Court observed, "Here plainly the refusal of the permit involved no error of law."

What I am emphasizing is that the too liberal grant of special permits has created an immense source of liquor supply in the United States to-day. It is comparatively easy to obtain liquor now. The public believes that enforcement has broken down. The conditions might be quite different if a sturdy policy of restriction of special permits had been steadily maintained from the first.

Permits are no longer issued in Washington, but the formulæ for these specially denatured alcohol privileges are subject to approval at Washing-

ton. In the reorganization of the last year, and since civil service ratings have been required, some courageous administrators have been wrestling valiantly with the permit situation in their respective districts. Their task is no easy one, for although they may say no to the loose issuance of a new permit, most of them took charge of districts where far too many permits already were in existence. It is a much more difficult task under the law to revoke a privilege once given, upon which the holder may be able to show a large outlay, than it is to prevent his securing the government's sanction to handle alcohol in the beginning.

To illustrate: In Philadelphia there functions as Prohibition Administrator, Colonel Samuel O. Wynne, a very able man. He inherited a veritable army of malodorous out-and-out diverters of alcohol from former halcyon days for alcohol racketeers in the City of Brotherly Love, when permits were ladled out with a prodigal hand. He has very materially reduced the flow of alcohol in his district. He cuts down amounts a permittee may handle, and he withdraws the permit entirely when he thinks he should, without being afraid to go to court to justify such administrative action.

Frequently agents are called upon for a high degree of courage in curbing politically powerful

permittees. On December 12, 1925, two investigators, Leo Connor and Andrew Quigley, with whom I came into close contact during my years of service, with the result that I hold their efficiency and integrity in high esteem, "bumped off" the Burlington Distillery at Burlington, New Jersey. These men were informed by the Burlington people, "You — — — won't last thirty days."

Twenty days later, on January 2, 1926, at eleven A.M., these agents were handed a telegram dated December 31, from Washington, which read:

"Your services are discontinued at the close of business as of December 31, 1925, without dereliction or misconduct. (Signed) Walton A. Green."

Major Green was General Andrews' assistant in charge of field agents.

However, when these men stood firm and dignifiedly refused to enter into any "bargains" for reinstatement, W. G. Murdock, as administrator acting for General Andrews, said, "For God's sake, don't tell anybody, not even your families, about that telegram." The men were reinstated.

As an excellent example of the value of a thorough investigation *before* granting permits, the Quaker Industrial Alcohol Distillery is a case in

point. It had a broad basic permit granted in 1924. In 1927 it asked for the additional right to withdraw one hundred thousand gallons a month of its own specially denatured alcohol for the purpose of manufacturing, on their premises, ethyl acetate. The administrator before whom their request was pending refused to say yes loosely, without a careful investigation. The investigation disclosed that there was no legitimate market for the requested ethyl acetate, and the plant did not have the capacity to handle that much alcohol. The alleged need for an increase was based upon faked orders. As a result of a court hearing not only was the permit to withdraw the one hundred thousand gallons of alcohol a month refused, but the Quaker Industrial Alcohol Distillery had its then existing permit privileges revoked.

In October, 1928, in Baltimore, Colonel A. W. W. Woodcock, an able United States Attorney, successfully prosecuted an alcohol case which is quite typical of the kinds of fraud of diversion which very often are not detected or stopped. This was an "inside deal." An election official of the state of Maryland bribed chemists in charge of the denaturing process and others who operated the pumps which carried the pure alcohol to tanks. He spent altogether in bribes six

thousand dollars. The participants loaded a car with pure alcohol and billed it as "pyro"—a denatured alcohol used in automobile radiators. The election official being notified of the car's initials and number diverted it and sold the contents in the bootleg trade. He succeeded in getting about ten cars out that way in a year. A simple calculation shows how much money he made in these transactions which were discovered. One carload of pure alcohol would make sixty-four thousand quarts of synthetic whisky. At four dollars a quart the ten cars reached a bootleg value of \$2,560,000. Even if obliged to bribe a few city police and deduct the price of bottling and delivery, the conspirators made a small fortune on an initial outlay in the form of a bribe of only six thousand dollars.

Before I lived so close to repulsive facts of this kind, I found it possible to be much more unconcerned at the sight of really splendid people of high principles imbibing bootleg liquors. Repeatedly facing the trail of bribery and of ugly unfair profits, reaped by the criminality of racketeers, which every quart of whisky signals, I can not put aside the conviction that the dregs in the liquor glass of to-day make its price too high.

To expose the facts which disclose the main sources of present-day liquor is useful in itself. It

helps to "clear the static" out of much confused thinking. But I desire through this volume to make specific recommendations for improvement in enforcement methods, wherever possible. There have been too many generalizations about possibilities of improvement both by those who at some time or other have been connected with enforcement activities and by those who have no direct, first-hand knowledge whatever of the task.

First, as to alcohol diversion. The organizations that exist for the purpose of securing effective law enforcement should insist that government regulations applying to the manufacture, distribution and use of industrial or specially denatured alcohol should be recast to conform with the recommendations of the legal department of the government. The regulations involve the interpretation of a law that must ultimately stand the test of the courts in cases tried by the law officers of the government. That means in simple language that since the Department of Justice—United States attorneys and special prosecutors—must defend regulations in court, the Justice Department should decide on the construction of the law and state it clearly in the regulations.

Far too much attention has been given in the past to the demands of the alcohol industry in writ-

ing the regulations to govern its operation. It would not be very far from the truth to say that the alcohol industry itself and other permittees using alcohol products have practically written the regulations. Even though it be conceded that most of the larger manufacturers of industrial alcohol are within the letter, if not the spirit, of the law in their own operations, the indisputable fact is that the production and supply of alcohol far exceed the legitimate demands of industry.

The result is that there is strong economic pressure not to be very "particular" about the nature of the business of those who place orders with the permittees. If production were limited to conform with actual legitimate business needs, and unscrupulous and dishonest permittees were eliminated through a blanket revocation of all permits, at an expiration date set long enough ahead to be fair to the trade, with reissuance only upon proof of bona-fide character of the business and operations of the applicant for renewal, the older, more reliable manufacturers would have sufficient, constant, legitimate industrial demand to keep their plants busy and to remove the temptation to laxness when supply far exceeds demand as it does now.

The Commerce Department, which has success-

fully and fairly dealt with other industries, should survey the actual amount of alcohol that industries like paint and varnish and other legitimate concerns need, and then the Prohibition Division should limit the permit privileges to manufacture to a quantity reasonably near that amount.

The application for a permit should set out definitely the covenants which the applicant is willing to enter into with the government as a condition precedent to receiving the valuable right to make alcohol or products using alcohol.

These covenants should give the government unlimited right of inspection night and day, with the right of access to files of correspondence, and so forth. There should be a system of cooperation between the huge alcohol manufacturing plants and the government by which the former would notify the nearest local governmental office of shipments over a certain size so that *before* release of the product its bona-fide destination may be determined. The legitimate permittee and the government are partners. They should work like partners.

The organizations interested in law enforcement should promote legislation to change Section III of the national prohibition act so that production of industrial alcohol will hereafter be at least under the same safeguards that existed before pro-

hibition was adopted. These changes are simple and have been worked out in detail by men in the Prohibition Division of the Department of Justice. The fact is that there are less effective safeguards now than in the days when the government was interested solely in preventing diversion of tax-free industrial alcohol to beverage uses, beverage alcohol then being subject to payment of an internal revenue tax. The old internal revenue statutes were exceedingly efficacious for the purpose of setting up a "watcher system" to insure the payment of all taxes legitimately due the government, and most of their provisions would be just as useful now as a watcher system to prevent diversion of alcohol or its use in ways not intended by the permit.

An example of the weakening, rather than strengthening, of vigilance over alcohol is the fact that in the days before prohibition the great bulk of alcohol sold for rubbing or massage purposes was marked: "POISON, for external use only." Now under the government prohibition policy, the label still bears the words "For external use only" but the "Poison" is missing from both the label and the product itself! The "rub" is now drinkable, whereas it was not before prohibition. Similarly, there has been a great increase in the numbers and

sales of "wine tonics," with an alcoholic content as high as twenty per cent. Government permits have been granted for all of these. I am assured by those who have used the "tonics" that they are both palatable and exhilarating! In September, 1929, press reports stated that Prohibition Commissioner Doran had just issued "orders intended to prevent the use of wine tonic for beverage purposes through adding solids to their contents." But why should a permit for such "tonics" have been issued in the first place? There has been created under prohibition a condition of far greater leniency as to the sale of what are in fact intoxicants than existed in the "good old days."

The way to reach these violators of the spirit of the law is to have some scientific agency of the government, possibly the Public Health Service, establish standards for "rubs," tonics, and other semi-medicinal preparations that will not interfere with their effectiveness for legitimate purposes, but will prevent evasion of the law against the sale of intoxicants. Then make the permits granted conform to that standard. Surely it would be fair to all concerned if the Prohibition Division were guided in granting and revoking permits by the advice and recommendations of disinterested scientists.

In a later chapter I shall describe the evasions of law by breweries. It is sufficient here to say that they are producing alcohol without the limitations of regulations which should effectively govern the disposition of alcohol manufactured as a necessary incident to the making of cereal beverages. Their operations should be conducted under permits that will authorize effective supervision and inspection by government agents and require the thorough denaturation or alteration of alcohol extracted from the beer, before it can leave the brewery for industrial uses.

When the enormous "alcohol leak" now existing is stopped by these and other feasible, reasonable means, the retail bootleggers' greatest source of supply will be cut off. Enforcement of the prohibition laws will be made proportionately simpler, and much more effective.

CHAPTER IV

THE BORDER LEAK

NOT all the leaks in prohibition as at present enforced—or unenforced—spring from the industrial alcohol industry.

The leak second in importance, my information discloses, is border smuggling. “Good” liquor comes through the Canadian border in great quantities. But let no ultimate consumer delude himself with the belief that he ever gets smuggled liquor in its original state. Practically all of it is brought to garages or old residences and there “cut” and rebottled for the bootlegger trade.

Illicit importation seeks the low moral levels of our border defense. Wherever customs employees, prohibition agents, United States attorneys, or other officers fail in a coordinated and aggressive vigilance against the smuggler, at that point great streams of liquor, as well as other contraband, flow through.

A little more than a year ago Florida was the leakiest spot, with great quantities of liquor flowing in from near-by British islands. But aggressive

action by that splendid service, the Coast Guard, in conjunction with a force of prosecutors detailed from my office in the Department of Justice, deprived Florida of this doubtful honor.

More recently Detroit has been in the center of the spotlight on prohibition weaknesses. During the spring and summer of 1929 the newspapers throughout the country contained extended and lurid accounts of the "great offensive" against rum smugglers in the vicinity of Detroit. The press reports told of the mobilization by the Prohibition Unit at or near Detroit of hundreds of additional agents, investigators and super-investigators to investigate the agents and investigators! One of the published reports said:

"It was decided there should be an immediate increase in the dry army's three units. More automobiles as well as speed boats and cutters will be supplied, according to the Treasury prohibition chief."

Then there were dispatches telling of the assignment of twenty-seven more patrol boats to the west end of Lake Erie and the Detroit River, including ten seventy-five-foot fast boats, carrying eight men each and rapid-fire guns. But one hundred or even one thousand additional boats will

never stop the leak at Detroit or any other border point if they are not used more efficiently and more honestly than prohibition forces have been used in the past where liquor flows across the border.

Certainly the beating of drums and the issuance of mimeographed threats of "a great prohibition offensive" about to start will not aid the government forces in gathering evidence of the kind necessary to convict the leaders of the liquor rings. The time to talk about a "dry drive" is after the evidence is gathered and the defendants are in court, facing sworn testimony of the kind necessary to insure prison sentences. Rum runners, even though some government men have not yet learned it, are not greatly frightened when Uncle Sam shouts "Boo!" But they do begin to evince nervousness when even a few of their number, and especially the men at the top of their gangs, start on a quick and extended trip to one of the federal penitentiaries!

The situation at Detroit is by no means new or surprising to me.

In 1925, after I had spent several days in Detroit conferring with the United States Attorney (at that time Delos Smith, a young man of ability and aggressive policies), federal judges, special agents of the Customs Service, the United States

Consul in near-by Canada, state police and special agents of the Bureau of Investigation, I reported to the Attorney General what was happening:

"I cannot over-emphasize the necessity of using every means at our command to bring home to the Treasury Department the need of strengthening the customs protection against smuggling in the vicinity of Detroit. At present there are tremendous quantities of liquor, narcotics, other contraband and a great many aliens, all coming across the border. It is a port of entry for illicit smuggled goods distributed in St. Louis, Chicago and other points west. Smuggling is carried on by railroad and by boat. This means 'paying off' several men in the railroad employ and one or two customs inspectors. It will not be difficult to get this evidence. It is essential that an investigation be pushed forward without delay to uncover the defaulting railway and customs men.

"A number of customs men are under suspicion. An able special customs agent has no power to control them. He should be placed in charge and made to feel his responsibility for results. He should be given at least a dozen fast boats to patrol the river. He should be given authority to investigate and remove customs men who are unfaithful to duty.

"The Prohibition Director's office is in a thoroughly bad state. The office of the Bureau of Investigation is well managed by Tom Wilcox, an energetic, ambitious, thoroughly honest and hard-working official. He has gone beyond his assignment to cooperate with the United States Attorney

and has done it under heavy odds because the police conditions in Detroit are so demoralized and because the prohibition office is so puerile. If we are to enable the United States Attorney to get results, we must take the lead in urging the Treasury Department to reorganize an inefficient prohibition office and coordinate and put morale in their allied investigation services like customs."

But did all these visits and reports and recommendations secure results? They did not. A condition of lawlessness and official evasion known and not corrected always gets rapidly worse. Here are the conditions that prevailed at Detroit and along our northern border *nearly four years later*, as detailed by one of the members of the Dominion Cabinet, Honorable William G. Euler, to the Canadian House of Commons on May 21, 1929.

"I have said something which may appear a criticism of the United States. I have no desire to be offensive, but I think there are some facts I should place before the House in view of the statements made that we are not dealing in a friendly way with our neighbor on the south. It has been stated that these boats go across at night. That is not entirely true. I took the trouble last fall to go down to Windsor. I was offered safe conduct by a liquor exporter and went out on a launch on the Detroit River. I could see the United States Customs Office on the other shore, and I could also see that it was not difficult to detect any boats that left the Canadian shore to go to the American side.

While in Windsor I got into conversation with a man engaged in the business of exporting liquor. I asked him, 'Do you cross in the daytime?' He answered, 'Yes; quite often.' I said, 'How is it they do not get you?' He replied with a smile, 'It just happens that they are not there when we go across.'

"Our inspector went to Windsor not so very long ago. He did not select any special day. While there, on January 14, he observed the following vessels cross the river to Detroit in daylight with cargoes of liquor:

"*Ben*, J. King, master; 10 quarter barrels beer, 11 cases whisky.

"*Rat*, J. Sales, master; 24 cases whisky, 5 cases wine, 1 case brandy.

"*Bat*, A. Jacks, master; 19 cases whisky, 1 case wine.

"*Rabbi*, I. Straight, master; 5 half barrels beer, 8 cases whisky.

"*Bird*, J. Bloom, master; 18 cases whisky, 8 cases bourbon, 3 cases scotch whisky.

"*Bar*, J. Peters, master; 13 cases whisky, 4 cases bourbon, 3 cases brandy.

"That was in one day."

But that was not all that the Canadian Parliament was told by its Minister of National Revenue. He submitted a report from the Canadian Revenue Collector at Bridgeburg, Ontario, written in April of this year, which told of conditions in that vicinity. The Collector's report to the Canadian Commissioner of Customs was as follows:

"Dear Mr. Breadner: I wish to give you a short account of the rum running at this port and our procedure in the matter.

"There are about 12 boats plying between here and Buffalo, New York, the river at this point being about half a mile wide. Some days we only have two or three boats out, and on other days the whole fleet will make a trip.

"The liquor and ale are brought from the distillery and brewery by truck, arriving here about two o'clock in the afternoon. The boats are all loaded and clearance granted about five p. m. and they are compelled to leave by six p. m. Some of these boats carry from eight hundred to one thousand cases, and on their arrival on the American side it takes from two to three hours to unload them. No effort as far as we can see is made by the United States authorities to seize any of these boats, as the United States Customs are always notified by us an hour or two before the boats leave, and occasionally we notify them as the boats are leaving, giving them the names of the boats and the quantity of liquor or ale on board. We have had high customs officials from Buffalo, special agents, and officers connected with the Coast Guard come over to the Canadian side, watch these boats load and pull out. It is a well-known fact that some of these boats land within a few hundred yards of the United States Customs office at the foot of Ferry Street and unload without being disturbed.

"Some few weeks ago no doubt you saw in the press where it was stated that a truck had drawn out on the Peace Bridge and unloaded the ale down on the bank on the American side by tying a rope around the cases and lowering them to the river bank. As a matter of fact this ale was unloaded

from one of the rum boats plying between here and Buffalo, right under the Peace Bridge, within a few hundred yards of the custom-house.

"Our officers who check these boats out were informed by one of the rum runners that they had no trouble in landing their cargo, as they were assisted by the officers of the dry squad on the American side, and it would appear that such must be the case, when seven or eight boats will leave here and land their cargoes, sometimes taking them three hours to unload, without any casualties.

"These boats are loaded directly opposite from the United States Customs office at Block Rock. You can stand by the window in that office and look across and see every case that is loaded on the Canadian side. I know that if conditions were reversed, we would have all these boats tied up in less than a week, and if the officers on the American side wished to put a stop to this business they could do it in about the same length of time."

These are strong words, but I have been in close enough contact with conditions at our border to know that in the main they are true. It is not justifiable for us to dodge criticism of the American Government just because it *is* our government.

Of course I am not exculpating Canada from all blame for the situation. In many instances, the Canadian officials have not rendered all the help they might. But where our own service has done work that commanded respect, and a real appeal has been made to Canada, we have had some re-

sults—in many instances very satisfactory ones—from Canadian officials. There is no Canadian law which prohibits the exportation of liquor to the United States, but in fact Canada derives a revenue of several million dollars from its tax on exports. We can not ask her—to her own economic disadvantage—to exercise greater vigilance in stopping smuggling than we are exercising ourselves.

The attitude of the Canadian Government was expressed by Mr. Euler, Dominion Minister of National Revenue, in a public statement from which I quote the following:

"Canada is quite willing to keep Canadians out of the business of running liquor to the United States. Moreover, if the United States authorities will insist on clearances for their own boats to enable them to check and control their own people and the violation of United States laws, the Canadian Government is quite ready to consider any further reasonable measure of cooperation with them."

Mr. Euler further quite pertinently called attention to the fact that practically one hundred per cent. of the border rum runners are American citizens who ply their trade with United States boats, but that if Canadian boats engaged in the traffic the Canadian Government would be prepared to enact legislation dealing with the matter.

The boats engaged in liquor running along the Canadian border are required to get clearances from the Canadian Government but not from the Government of the United States. In other words, a small fast boat may leave Detroit or any other American port on the border without notifying American authorities as to its destination or business, its ownership, or other facts that would aid in preventing rum running. We need supplementary legislation, which for four years has been drafted and recommended by the Prohibition Division of the Department of Justice, to control the licensing of small craft.

The position of the Canadian Government has been that, liquor in Canada being legal merchandise, there is no reason under the law why clearances should not be granted to boats carrying cargoes of liquor to the United States. In the words of Mr. Euler: "Once liquor has paid the excise it is as clear as other legal commodities and the procedure for exportation is identical with that pertaining to other commodities."

The Canadian Government did enter into a treaty with our own government, which became effective in July, 1925, whereby both governments agreed to furnish information to each other concerning clearances of vessels or the transportation

of cargoes, shipments or loads of articles across the international boundary when the importation of the cargo carried or of the articles transported by land is subject to the payment of duty; also to furnish information respecting clearances of vessels to any port when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of the United States or Canada.

By a further provision of the same treaty, Canada bound itself not to grant additional clearances to vessels laden with liquor for ports in places such as Mexico, South America, Europe, Asia and Africa, when it was evident from the tonnage, size and general character of the vessel, or the length of the voyage and the perils or conditions of navigation attendant upon it, that the vessel would be unable to carry its cargo to the destination proposed in the application for clearance.

In other words, there is now available to the officers of the United States definite information as to the cargo and destination of small boats leaving Canadian ports contiguous to those of the United States. Other provisions of the treaty were similarly helpful to officers of the United States sworn to enforce the prohibition laws. It would, of course, be even more helpful if the Canadian

Government agreed to refuse clearance to vessels bound for United States ports with cargoes of liquor. This I believe it will do when it has greater respect for the good faith of our own official efforts. But whether Canada later agrees to revise its treaty with the United States to prohibit exports of liquor to our country, or whether it maintains its present refusal, our own officials can not avoid their responsibility for the leak across our boundaries.

The leak will continue, drive or no drive, dry mobilization or no dry mobilization, until there is real coordination and cooperation among our own forces at Detroit and elsewhere along the borders.

Detroit is an example of departmental jealousy triumphant! The responsibilities of the Customs Service and Prohibition Service, and the state and city police overlap in law and in its practical operation. This condition has become worse in recent years. The situation is wholly inexcusable, because both the Customs and the Prohibition Service are under the Secretary of the Treasury. He could in effect crack their heads together and make them work together effectively. Instead, there has been a policy of vacillation and a catering first to the recommendation of one service and then the other.

A better focusing of responsibility will have to come before there is permanent success on the side

of the Federal Government in what newspaper feature writers term "the gigantic battle of Detroit." What really has been wrong at Detroit, besides the service of some dishonest men, is that most deadly of maladies of the Federal Government: small departmental jealousies which result in an utter lack of coordinated effort.

Evidence is secured and hoarded in one service. An observation of a suspicious circumstance by one officer of the government results in just a shrug or a comment, "That's none of my business. The prohibition agents or some other service ought to tend to that." When the press, civic bodies and citizens complain of smuggling, the Customs Service blames the state and city police; the prohibition agents blame the Customs; the United States attorneys sit in grand legal isolation saying in effect, "What can we do but lose cases when they don't bring us good evidence?" And the local police say, "It's the fault of the Canadian officials; they help the smugglers across."

But let a big violator be caught by accident, or otherwise, and conviction secured, and all these services collide in a head-long rush to claim credit and to spread in their respective offices at Washington reports that it was their act and zeal which secured results—but the other services "grabbed

the credit." This creates an utterly demoralized condition of which smugglers and other law violators are not slow to take advantage. In effect, the different services are fighting one another, instead of unitedly combating the bootleg fraternity.

What has been needed at Detroit, and elsewhere, is development of team-play between the several forces available, the coordination of their activities, and the development of a real will to win.

Perhaps all that sounds like theory. I can imagine a reader saying to himself, "Oh, it's well enough for a woman to sit at a desk in Washington and outline a beautiful plan for catching bootleggers, but she probably hasn't an idea in her head that would amount to a row of pins in practise."

Let me call attention, therefore, to the fact that a situation similar to that which now exists at Detroit existed several years ago near Seattle, Washington. We secured the detail by the State Department of Mr. Ernest L. Harris, Consul General at Vancouver. Through his efforts and the leadership and labors of Mr. Alf Oftedal, then Special Intelligence Agent in charge on the Pacific Coast, the work of the various services was co-ordinated. More than that, a plan of cooperation with the Canadian forces was put into effect that worked out satisfactorily for both governments.

Smuggling both into Canada and into the United States in that region was radically reduced.

In March, 1929, I earnestly urged the State Department to detail Mr. Harris to the Detroit area to make a survey and recommendations as to what would improve conditions. The request was granted and he spent considerable time studying the situation on both sides of the boundary-line. He did it without blare of trumpets or head-lines. He came to Washington and laid out his report—a very frank and serious document—before the Attorney General's office recommending the dismissal, or removal from that district, of some officials and other changes in personnel. As a result the Treasury Department has reorganized its Customs Service, and other strengthening of organization is on the way.

Intermittent "wars" against liquor smugglers accomplish little, especially when given advance advertising. The only way to enforce the law is to enforce it all the time, not just some of the time.

Mr. Harris, who has now gone to Vienna as Consul General, should be borrowed again from duty with the State Department for a period of six months. He should be asked to finish the work he has so effectively started and coordinate forces all around our border. He should be given author-

ity—enough to make such changes in personnel as may be necessary and advisable. A “follow-up” system which he could devise should be established to keep his coordination plans functioning.

Undoubtedly the ideal method to get results along our borders will be to organize a unified border patrol, made up of the best-trained men from all the various services, and amalgamate them into one first-class border police force with an *esprit de corps* rivaling that of the famous Mounted Police of Canada. There has been a bill before the Judiciary Committees of Congress for more than four years to bring about this very thing. The plan ought to be given the vigorous support of enforcement organizations. To secure a unified border patrol, however, requires passage of legislation, which in turn involves politics, and all that means long delay, as well as the meeting and overcoming of the tenacious traditions and jealousies of the various services which would have to be reshaped.

Even without a new organization for border patrol purposes or until it can be set up, the big leak can be plugged if there is coordination and the right kind of planning at Washington by men who are really anxious to have their forces work together with the common object of stopping the flow of liquor across the border.

CHAPTER V

THE BEER LEAK

WHILE the principal sources of supply for bootleggers have been through the Canadian border, and from privileges exercised by holders of alcohol permits, there also has been persistent leakage from breweries scattered about the country. Under existing law, breweries, or cereal-beverage plants as they are commonly known, are permitted to manufacture and sell "near beer" containing not more than one-half of one per cent. of alcohol. The process involves the creation first of regular beer with an alcoholic content of five or six per cent., or in some cases even more. The original product is then de-alcoholized, that is, the alcohol is drawn out down to the maximum content of one-half of one per cent. established by law. The alcohol thus drawn off is a constant source for the bootleg trade. Leakage of "high-powered" beer has presented enforcement authorities with a considerable problem as well as the practise of "shooting" or "needling" alcohol into near beer.

Many of the breweries have been driven to cover and forced to operate through straw men. The system they use to violate the law works out something after this fashion. The "Malt Brothers," holding a permit to manufacture cereal beverage, have been caught cheating and have had permissive privileges revoked. They desire to continue, but under the law the door to further permit privileges is shut. Nothing daunted, they secure the aid of three or four citizens, generally individuals with good reputations but perfectly willing to place the same—for a consideration—at the disposal of the beer specialists. This legally respectable group of straw men assembles, organizes a corporation, creates capital stock, promulgates by-laws, elects officers, "purchases the brewery," on paper of course, secures a permit and starts working, with the discredited former permittees directing operations behind the scenes.

A series of hearings held in Philadelphia in an attempt to eliminate these organizations, disclosed the fact that the straw-men officers of reorganized breweries knew nothing about the beer business, had no financial means with which to buy a brewery, knew nothing concerning distributors of the cereal beverage they were supposed to manufacture, did strictly a cash business, made no deliveries and,

though manufacturing for an apathetic cereal beverage market, were able to keep going with all finances apparently sound.

Why should we have dozens of such permittees? It would have been easier—and more in keeping with the law—for the issuance of the permit to have been held up. Investigation *before* issuance would disclose the straw-man character of the ostensible owners and their unfamiliarity with the business and financial unreliability quite as well as the later investigation, and refusal to issue the permit could be based on such facts. It would be well worth while for enforcement to learn from the courts whether a permit should be reissued under doubtful circumstances of a business reorganization. One reason revocation cases have been lost by the government in court is because of the unbusinesslike dealings of prohibition officers with the concerns when they were asking for their permits. I do not believe in so much weak yielding to their demands, but I do believe the brewery should receive timely notice of the government's decisions, with reasons given; and every contact by the government with representatives of the liquor trade should be marked by frankness and consideration—but firmness too, in demanding necessary compliance with steps that will make the agents' task of detecting cheating easier.

In one state breweries erected high board walls and wouldn't permit government agents inside! There is no excuse for such a relationship to develop between a permittee and his government.

One beer racketeer calmly advised the Assistant Prohibition Administrator in Philadelphia that he was the "fastest beer shooter" in the state of Pennsylvania, and that if he, the Assistant Administrator, would leave town with his forces for about an hour, he would shoot enough beer to supply the trade for a month. This same modern brewer also delivered himself of the statement that he would "shoot beer any time that he could get away with it and that was most of the time." Yet the valuable franchise he holds from the government is all that keeps his business going.

After the regular beer is manufactured such a brewer sends out "spotters" who determine the location of government officers. Sometimes they bribe an agent and get him to ride the trucks. The high-percentage beer is quickly "shot" out to what are termed "drops"—garages, or other convenient hiding-places, located about the community.

Another method breweries have utilized, in other sections, to defeat the law is the supplying to near-beer establishments of products conforming to the one-half of one per cent. limitations, but ac-

accompanied by secret supplies of alcohol to be "needled" into the glasses of near beer as served.

These difficulties would have been reduced had the government dealt intelligently, fairly and in a far-sighted manner with established breweries when prohibition took effect. Brewers had large investments in plant and equipment, and during the first two or three years of prohibition most of them made an effort to deal honestly with the government, converting plants to other uses, building up a demand for near beer and disposing of the excess alcohol taken from the beer in a legal manner. Had the government adopted a forward-looking policy and protected the established breweries from fly-by-night competition fostered by politicians, there would have been fewer leaks from the breweries. Instead, however, of restricting brewing permits as far as possible to long-established, dependable concerns, making regulations strict, and watching the permittees closely, prohibition officers too often construed the law as making any person with a nice clean face, and no guns sticking out of his pockets, eligible to enjoy permit privileges after, of course, making application in due form and, most important of all, bringing along with the application an endorsement of a congressman, alderman or other politician. Many of these new companies had little

invested in the enterprise, knew little or nothing about the brewery business and were unreliable in every way. Their sole object, of course, was to keep about three jumps ahead of the law, and while cutting in on the profits of the old, established, honestly conducted breweries, they not only surreptitiously sold real beer but in addition supplied large quantities of drawn-off alcohol to whisky bootleggers.

I have before me as this is written a letter from a citizen interested in law enforcement in an eastern city, giving information concerning an existing situation. A group of men, who control a warehouse from which not long ago many thousands of gallons of whisky were siphoned surreptitiously into another building near by—there passing into the possession of a ring of bootleggers—were deprived of their permit. Nothing daunted, they organized a new company to do a cereal-beverage manufacturing business in the same premises.

When the Prohibition Administrator's attention was called to the character of the men to whom the beverage permit had been granted, he stated that he had no fear that there would be further violations of the law because he could keep his men in the establishment day and night and have supervision over it. The citizen who wrote the letter

naturally thinks day and night watching will be no more successful now than before and regards it as more likely that some one will simply collect a percentage on real beer and alcohol sent out rather than prevent the abuse of the permit granted to men shown to be unreliable in former dealings with the government.

The law provides that before a permit of any nature is issued prohibition authorities must make a careful investigation of persons who submit the application. The character of some of the investigations made has been ridiculous in the extreme. In general such inquiries would consist of interviewing the chief of police, a banker, and a few other persons whom the applicant himself probably had named. Under such circumstances the applicant has been painted in colors of a most attractive hue. Much greater care should be exercised *before* these cereal-beverage permits are granted.

One of the most ingenious evasions of law is that involved in the manufacture of "wort." The manufacture of this commodity and its sale to "wildcat" or "alley" breweries originated and has flourished extensively in Chicago, and in the eastern district of Wisconsin, especially around Milwaukee.

The word "wort" will not sound particularly palatable or cheering to the average reader, either

prohibitionist or anti-prohibitionist. Let me explain, then, that wort is a brew. It is, in fact, unfermented beer or liquid malt that contains no alcohol and is used only in the process of manufacturing beer. Wort is just like beer except that the manufacturing process of the former ends before yeast is added. To make real beer from wort it is necessary only to add yeast, ferment the mixture and filter it. Just one reason exists for the manufacture of wort, and that is to make it possible for red-blooded American citizens who must have their beer fortified by pre-prohibition "authority," to secure it readily and quickly. The manufacture of wort itself, in view of the fact that it has no alcoholic content, is not illegal, but there are scores of wildcat or alley breweries that, supplied with wort by larger and old established breweries operating legally themselves, very quickly turn out beer of high alcoholic content.

The brewery situation is one that calls for action not only from the standpoint of making prohibition effective, but as a matter of fairness and justice to businesses having huge capital investments and often a record of operating legally,—or which would operate in a perfectly legitimate manner if protected against the unfair competition of a multitude of fly-by-night breweries with comparatively

no substantial investment and no desire to obey the law.

The brewers should be called into conference and encouraged to make constructive suggestions for the proper and legal conduct of their own business. Out of conferences arranged by the Department of Commerce, under President Hoover when he was at the head of the department, other industries evolved plans of operation that were of vast private and public benefit. Industries that were making an excessive number of models or types of products, or that were working their employees excessive hours because of cutthroat competition, found themselves able to reach agreements that were mutually beneficial and of public service.

The old brewery interests of the country were controlled by a substantial type of business man who could and would help to work out methods to operate legally under prohibition, if given the opportunity, protected from the establishment of unnecessary new brewery concerns, and if made to know by firm fair dealing with the government that in that way he could best safeguard his investment. Two conferences of brewers were held several years ago. Although no adequate plan had been worked out in preparation, and only part of the industry responded, still these conferences

might have been of public benefit, but in these instances, as in several others, a sound plan was wrecked by public misunderstanding based on misleading newspaper reports. A newspaper correspondent, not at all friendly to prohibition enforcement, wrote an article of a sarcastic nature to the effect that the government was about to let the brewers regulate themselves. The result was that many drys jumped to the conclusion that the intention of prohibition officers was to let the brewers formulate practically the entire policy governing their operations. Letters and telegrams of protest poured in, enforcement officials became afraid of the political result, and the plan of securing practical cooperation of the concerns with big investments, and therefore those most interested in limiting their production to legitimate beverages and channels of distribution within government sanction, was abandoned.

After a strict weeding process by which just as many straw-men permits are revoked or not renewed at the expiration period as possible, the brewers should be consulted, and many methods of preventing leaks would result. Then the cereal-beverage regulations should be redrawn so as to throw around the permit brewery every possible safeguard from the wildcat or non-permit plant.

I believe that with firmness and frankness and patience it is still possible to secure the cooperation of the long-established and larger brewery interests in complying with rigid regulations and limitation of their permits. Particular attention should be given to the prevention of the diversion to bootlegging channels of the alcohol which is extracted from beer in reducing it to the one-half of one per cent. maximum. By effectually restricting the number of breweries, and carefully investigating the character of ownership before granting or renewing permits, the problem of stopping the beer leakage and of ending the diversion of alcohol from cereal-beverage plants can be materially lessened.

CHAPTER VI

STILLS

IN AS brief compass as possible in order to permit me to give some picture of the situation, I have described the principal sources of illegal liquor reaching bootleg trade to-day. I have so far left out only one—manufacture of whisky from the numerous stills in certain sections of the country.

Illicit distilling has always formed a stubborn enforcement problem in isolated mountainous sections that furnish a market for “moonshine.” Hardly a day passes in Washington, the nation’s Capital, that either police or prohibition agents do not make a sizable seizure of moonshine liquor flowing in from stills in near-by Maryland or Virginia. At the time this is being written, Washington newspapers carry stories of a seizure of more than three thousand quarts of “Maryland corn” temporarily stored in a garage. Most people, unfamiliar with the liquor history of the national Capital, would naturally view such seizures as the direct outgrowth of the prohibition law. Such is not the

case, however. Ready market for tax-free liquor has always existed in the metropolitan centers of Baltimore and Washington.

Stills were numerous and in active operation long before prohibition. The press reports that even Ireland, where saloons are numerous, has her bootleg problem, from those who try to dodge the tax on spirits. Moonshine has always been a more or less popular beverage with certain drinkers. Many old-time saloon-keepers of Baltimore and Washington included the tax-free product among their merchandise, and reaped the enormous profits accruing from the sale of the illicit liquid to a clientele whose pocketbook and taste were satisfied with the cheaper article.

There may be, and probably there is, more illicit distilling now than before prohibition. But the basic condition always existed, the only difference being that in the old days it attracted little attention.

In a consideration of actual enforcement activities the seizure of stills has assumed a disproportionate value in the public mind. Many people believe stills are the chief source of illicit supply. That is not true. In fact, the still problem is a comparatively unimportant phase of lawlessness at the present time—because it contributes but trickles

in comparison with the streams flowing from improper use of alcoholic permits through cover houses and the diversion of the alcohol by-product which breweries have on hand. When an agent finds an illicit still he can bring in some concrete thing. It makes a newspaper story. It constitutes physical evidence later in the trial. Actually, its relationship to the circulation of liquor in the community may be comparatively slight, but the combination of head-lines, photographs, the plea of guilty by the illicit operator, and the spectacular features of a public destruction of the physical property, all tend to create the psychology of over-emphasis on capture of stills. To a much more real extent than I am able to emphasize without tiresome repetition, the problem of enforcement is *prevention* of violation by tightening regulations, guarding the use of permits and coordination of evidence-gathering agencies so as to apprehend the larger racketeers.

I would not for a moment disparage either the service or the bravery of those agents who go back into isolated moonshine districts and deal with entrenched lawlessness, effectively, by arresting the distiller and bringing in or destroying the illicit manufacturing plant; but I do dislike seeing this enforcement activity submerge in the public mind

the much greater importance of preventive measures like tightening of regulations and improving border patrol, which keep violations from happening and the liquor from getting into circulation. That is so much more effective than punishing the offense later.

While it is true that thousands of stills have been or are in operation, the fact is that they can not exist long or profitably if there is any local sentiment for law enforcement.

Comparatively few stills turn out liquor in more than small retail quantities. A large distilling plant capable of producing wholesale supplies has too short a life. In fact, I have heard it often stated that bootleggers expect to make a profit for not more than six months, at the outside, before detection. There are too many opportunities for discovery. Sugar or corn have to be bought in great quantities. Gas, electricity or other power hook-up has to be made, and huge bills paid monthly. The still makes considerable noise. The odors emitted and the traffic to and fro soon are noticed even in secluded localities, and if public sentiment is for law enforcement, the stills are soon put out of operation, provided the other big "if" of prohibition enforcement is present, that "if" being whether prohibition officers are honest and capable.

And that last "if" brings me to the most important phase of the problem of prohibition enforcement, to wit: facing the obstacles that stand in the way of getting an effective force of prohibition agents, keeping that force clean and its methods legal, and estimating whether such obstacles can or can not be overcome.

CHAPTER VII

THE BIG OBSTACLE TO ENFORCEMENT

POLITICS.

In that one word I can best and most completely describe the greatest handicap to the enforcement of the prohibition law. Politics and liquor apparently are as inseparable a combination as beer and pretzels. But the combination is no new thing. It existed long before the Eighteenth Amendment was adopted.

My years are not so few and my memory not so short but that I can recall the old alliances between the brewers, distillers and saloon-keepers on the one hand, in the days before prohibition, and professional politicians on the other hand. The liquor interests financed city and state campaigns; they controlled city councils, city boards of commissioners, state legislatures. Through their political allies they prevented enactment of early-closing-hour ordinances, Sunday-closing laws applying to saloons, local or county option measures and higher-license-fee ordinances and laws. The saloon-

keepers, the brewery owners and the whisky wholesalers were always willing to chip in to help elect a county or state's attorney, a member of the legislature or the city council, who would be broad-minded, as they termed it, on the liquor question.

I do not expect to live long enough to witness a complete divorce of politics and the liquor trade, legitimate or illegitimate.

Let us see how politics and liquor maintain their alliance under prohibition.

Not so long ago a politician of national rank—a recognized leader of his party and for some years a Senator—died, leaving in a safe-deposit vault a quarter of a million dollars, in cash. He had other property, but the quarter of a million dollars did not belong properly in his estate. It belonged to a political “fund.” Certainly none of the politicians who handled the money profited personally by its possession. They were not of that type.

The deceased had practically controlled the government of an entire state in which prohibition enforcement had been and is most lax. Law enforcement officers there danced when he pulled the string. Elections were just processions of his creatures into office. But elections mean political campaigns—electors must be “told” and be made to

like it. Political campaigns can not be operated on oratory alone. Money in great sums is essential. The "Big Boss," as he was known, needed money with which to meet a campaign deficit. For that reason and others, partly to maintain his political control, he secured the appointment of one of his political friends as prohibition director. This man was wealthy and not personally dishonest. He spent much of his time elsewhere and permitted two men to direct enforcement efforts in his district. They managed affairs so that practically all within the state who wanted permits for the manufacture, use or sale of alcohol, and the operation of more or less near-beer breweries, were satisfied. Their satisfaction found expression "practically"—in contributions to the political fund.

This is a typical and well-known example of one of the most strangulating forces with which law enforcement must cope. No one would seriously dispute its irregularity, yet all participants went unpunished. They were indicted and the trial progressed a week, at the end of which time the judge instructed a verdict for all defendants. The government had no right to appeal under such circumstances. There the case ended. Evidence of actual participation of those who really wield the power which chokes enforcement activities

is most difficult to obtain,—for the money finds its way through various channels up to the local or state “boss.” Similarly his orders and agreements with appointees pass down indirectly. And there is another factor that often defeats the government in obtaining evidence against the real parties. It may be fairly referred to as the “law of the political jungle.” Although I have battled against it in line with my duty as a prosecutor for the government it has never ceased to arouse my real admiration—as courage, even though sometimes misplaced, always must. I refer to that spirit of sportsmanship which will make a ward worker go to jail rather than “squeal,” as he usually terms it, on his political boss. This spirit grows up, however, only because the boss “stands by his boys.” Civic organizations advocating reform could well take a lesson from ward politics in organization and interdepending loyalties.

The influence of liquor in politics begins down in the city wards and often in country districts. But it extends, if it can, up to the Cabinet and the White House in Washington.

After the notorious “king of bootleggers,” George Remus, had been convicted and successively lost his appeals to the Circuit Court and the Supreme Court of the United States, the rumor

reached me that he would never serve a day in Atlanta Prison to which he had been sentenced. I set it down as only bragging of the defendant. But a few days later, a phone call came from the White House, stating that a respite of sixty days would be granted Remus if the Attorney General would send over the necessary papers to effect that result. Prominent politicians, including the then Senator Reed, of Missouri, had intervened with the President to urge delay.

The natural impulse when the White House phones to any department is to rush into acquiescence to the request. But Attorney General Daugherty and I viewed it as a duty to inform the President of facts. We prepared a brief summary of the actual facts. President Coolidge refused the respite, and shortly after that the convicted gentleman took up his residence on what came to be known as "Millionaire's Row" in Atlanta Penitentiary. There, with other wealthy prisoners, he later succeeded in bribing the warden (who had no fitness or training for his job but was solely a political appointee) to extend special favors, for which the warden was in turn convicted and served a sentence in the institution he had supervised.

While his first case was before the Supreme Court of the United States on appeal, Remus

figured in another case involving the use of so-called practical politics by liquor thieves. I refer to the Jack Daniels Distillery in St. Louis. The jury returned a verdict of guilty against twenty-three of the twenty-six men involved in the conspiracy. Among them were a state Senator, a former Collector of Internal Revenue, a former circuit court clerk, a former deputy sheriff and a member of each of the city committees of the Democratic and Republican parties.

The notorious Remus was the moving spirit in more ways than one. He devised the plan which succeeded in getting the whisky out of the distillery. First, he made a connection with both Democratic and Republican politicians in St. Louis and secured an introduction to the then Collector of Internal Revenue. The Collector agreed to change gaugers at the distillery and to substitute for the old, honest, experienced man one suggested by his political friends. The Collector did not accept a bribe. He simply did what the politicians told him to do. His job was dependent upon their continued good will. After securing the removal of the old gauger, the conspirators had the whisky siphoned into a garage across the street and water was substituted in the barrels remaining in the distillery. The Collector was convicted and

went to Leavenworth. He paid the price for his law violation, but some of the politicians back of him who exerted the real influence over his official acts remain unpunished.

Very early in my tenure of office I encountered the powerfully entrenched influence of anti-prohibition sentiment and the close connection between liquor and politics in New York. A courageous agent who reported evidence as he found it, irrespective of who the defendants might be, presented very convincing proof of a violation of law connected with the Green River and Eminence Distilleries. It involved handling of liquor by the La Montagne brothers, one of whom is a relative by marriage of the president of Columbia University, who is one of the most violent and vocal foes of the Eighteenth Amendment. The La Montagnes pleaded guilty and served a term in the local jail, in addition to being fined two thousand dollars each; but every conceivable political and personal appeal, including an appeal by a Cabinet official, was made to quash the case. A part of the appeal included statements that eighteen thousand dollars had been voluntarily contributed to the Republican national campaign by politicians who had secured permits for the distilleries releasing the liquor in question.

Attorney General Daugherty called me to his office and told me of the pressure that had been brought on him to "call off any further investigation in this matter." He asked for my views. I conferred with the United States Attorney and, learning the nature of the evidence, advised the Attorney General that no prosecutor could in good conscience be requested to withdraw from the case without himself becoming an accomplice in suppressing a crime. The Attorney General agreed. The grand jury investigation proceeded. There was no trial because the defendants pleaded guilty quietly and went to jail.

Philadelphia for many years has been known as a center of an illicit alcohol ring. Consequently, liquor cases there play a very big part in city politics. A number of whisky and alcohol distillers organized several companies with interlocking directorates. Well-known state and national politicians assisted these five interlocking corporations to acquire permits. One day two inspectors, Connor and Quigley, saw a truck being loaded with unmarked pure grain alcohol. They seized it, and the driver, Joseph Aikon, was placed under arrest. There stepped forward a young lawyer named Ben Golder who gained prominence by his management of the defense of liquor cases. The evidence

in one showed violation of the law to the magnitude of thirty thousand gallons of bonded whisky released on twenty-five fraudulent counterfeit government permits! Men of no particular consequence, however, were the only ones charged with an offense by United States Attorney Coles. When one case came up for trial the driver offered a plea of guilty. Connor and Quigley, the agents, stepped forward and asked the judge for permission to state the facts of the case. The judge listened to their recital and ordered the United States Attorney's office to make a thorough investigation. However, the only result the United States Attorney obtained for the government in enforcement of the law was a plea of guilty by two figureheads and a thousand-dollar fine!

In the meantime Mr. Golder's reputation as a defense lawyer was growing. He attained a large practise in defending prohibition cases and was elected to Congress, where he sits to-day. When the new Prohibition Administrator, Samuel O. Wynne, recently was appointed in Philadelphia, the first political request that reached him was from Congressman Golder to the effect that he get rid of those active agents, Connor and Quigley. Colonel Wynne looked up their records—and promoted them to senior investigators!

It takes courage to withstand the corrosive influence of politics. Plenty of men can be found, however, who can and will do it. The men appointed as United States attorneys and as prohibition administrators can stand firm, do clean work in law enforcement and still be fair to the politicians if they themselves are not possessed by an overweening political ambition.

I am thinking of one United States Attorney, particularly, who is serving now in one of the most difficult and congested districts in the eastern part of the United States. He is a man of good personal character and an able lawyer; but political ambition fills his mind. He has long looked covetously at the possibility of nomination for the governorship of his state. He sees the mirage of political advancement on every horizon. As a consequence he is timorous and yields to expediency and an oversolicitous desire to consult with political leaders when evidence is laid on his desk justifying prosecution that may not prove to be popular with the public. He can't enforce the prohibition laws with one eye looking out for "popularity." His ambition makes him unequal to his task. If law is to be enforced in his district, he will have to be replaced or submerge his political yearnings in an aggressive performance of the duties of his position.

I do not object to politics. I admire the loyalties and efficiency of political organizations. I have always been active in political matters. I do hold to the philosophy that in the end *the best politics* is playing the game squarely and enforcing the law vigorously. But, as I said in the beginning, politics, from the county court-house and the city hall to the national Capitol and the White House in Washington, has been most responsible for the failures of prohibition enforcement.

I am not minimizing the effect of the thirst of a very large number of people for alcoholic liquor. But that's the other side of the picture. If they were not thirsty they would obey the law, and enforcement would not be a problem. Voluntary obedience to law is an ideal—and far more to be desired than enforcement. But we must face facts. And the fact is that there is too large a number of people unfriendly to the Eighteenth Amendment to expect at this time enough *voluntary* obedience to save our national honor.

You can neither coax, scold nor nag people into law observance. Consequently, *enforcement* is the necessary approach at this time. Enforcement in court, not promises. Orderly enforcement. Strictly legal methods of enforcement. Enforcement by trained, highly intelligent men, imbued with high

morale and a pride in their service. Courageous enforcement. Enforcement backed up at Washington. Everybody would not like such enforcement, but everybody would respect it—even politicians.

Politics has said: Enforcement can't be orderly and unremitting because it must be periodically relaxed when we need the underworld vote. It must not even be as strong as the law generally is in a place like New York, where people are "touchy" on the subject. We must appoint not trained men but those who get the vote out and who will be reasonable with the boys.

Evasive politicians from districts where the dry sentiment is very strong, in order to capture the dry vote at approaching elections, often urge the headquarters office to issue "Pollyanna" statements of how many agents will be rushed into that quarter and how effective prohibition is *going to be* to-morrow—always to-morrow! But when some agent or attorney actually does act with courage, old "Political Pull," in the form of some office-holder or committeeman, sidles into offices at Washington and influences some puerile "higher-up" to issue a vacillating statement or apology and to transfer that agent to Arizona or Kansas! No wonder at such times courageous men on the fighting line lose their morale!

But one battle after another to try a case or improve the personnel has made me know that worth-while results *can* be obtained, even in the constant warfare against politics, by grit, persistence and organization.

The reason politicians of low caliber have been able to effect a mutually profitable combination with liquor racketeers is that the people who favored law enforcement in the districts affected have not seen the necessity or been willing to make the necessary effort for local political reform.

Take the case, for instance, of a District Attorney who has been in office more than five years and during all that time has made no real effort effectively to prosecute liquor violators, large or small. It is notorious throughout the city in which the District Attorney has his office that a certain coterie of lawyers handle practically all liquor defense cases and most of them result either in very small fines, short-term sentences, are quashed or nolle-prossed, or are lost on trial by the failure of the District Attorney and his assistants properly to present sufficient evidence even when ample proof has been furnished by prohibition agents. Throughout this period thousands of people in the district have written letters of protest to the newspapers, to the Department of Justice, and even to the President

of the United States, condemning the inefficiency of the District Attorney in handling liquor cases.

The official has not at this writing been removed, however, because he has the backing of the political organization of his district. He has had the support of the Congressman representing the district—or misrepresenting it—and of the Senators from his state. Throughout the city he has integrated his activities with the political machine which operates effectively on election day to bring out the votes of the thousands of people who are beneficiaries, direct or indirect, of all kinds of law violations, graft and special privilege.

That District Attorney, or a man of similar character—though perhaps not quite so offensive personally—will continue to occupy office until the people of the district who believe in real law enforcement organize politically and overthrow the political machine built up on dishonesty.

It is well enough for temperance organizations, church societies, ministers, Sunday-school classes, business men, Rotary clubs and hundreds of thousands of individual citizens to pass resolutions or write letters condemning perversion of justice. But they can not in that way pass the responsibility for conditions on to Washington. The President of the United States, for instance, can not assume the

task of *personally* inquiring into the qualifications and fitness of every federal law enforcement official in the United States. He must, if he is to secure results in the enactment of a large general legislative program, work with and secure the cooperation of practically all the members of his party in the House and Senate. He must accept as representative of their districts and states the congressmen and senators who have been duly elected. Besides, many of the appointees have to be confirmed by the Senate, which means the President *must*, in order to appoint the highest qualified officer, have the support of both of the state's senators, since the objection of one alone can prevent confirmation.

The only effective argument with a congressman or other elective office-holder is *votes in the ballot box on election day*. Not votes that *might* have been cast, or votes that were absent in primary elections—but votes cast in solid blocks at every election, primary or general, in ward and precinct meetings, city caucuses and whenever party machinery is being formed.

In the district I have mentioned, the one sure way of securing effective law enforcement by a type of district attorney who will “sell out” for neither political advantages nor money, is for the people

who believe in enforcement to make themselves felt locally. They will have to take an active part in the meetings, caucuses and primaries of their party in wards, precincts, townships and assembly districts; they will have to be prepared to serve as poll watchers and election officials; they will have to canvass their districts by house to house visits; they will have to organize each block, each side of the street and everywhere make some one person responsible for getting out the votes.

But if they make the right kind of effort—and it is a real effort and a hard task—they will overthrow the corrupt political machine, turn out of office the councilmen, state assemblymen and congressmen and replace them with men imbued with an honest purpose to enforce not only the prohibition law but all other laws. It has been done before and can be done again.

When that has been accomplished, they will then have the leverage at Washington to make demands which can be promptly heeded for the removal of a derelict District Attorney who has strangled enforcement for more than five years.

When party machinery in the district is in the hands of the law-abiding element of citizenship—which is always the largest element if it would only express itself—the United States Senators from the

state in which the district is located will find it expedient to heed the demands for improvement.

There is an old saying, based on experience, that "the way to fight fire is with fire." The way to fight politics that strangles enforcement is by organizing the decent civic forces in city and county elections to strangle the strangulators. Often when such groups can not win the election they can maintain voting importance enough to exert a cleansing influence thereafter in appointments.

CHAPTER VIII

INCOMPETENCE IN HIGH PLACES

THAT the prohibition force, largely as the result of political influence, was for several years filled with unfit men is proved by official records. Those records disclose that in the six years from 1920 to 1926 more than seven hundred and fifty prohibition agents were dismissed from the force for delinquency or misconduct. Among the charges which brought dismissal were extortion, bribery, solicitation of money, illegal disposition of liquor or other property, intoxication, assault, the making of false reports, and theft. Sixty-one officers and employees were dismissed for acts of collusion or conspiracy to violate the very law they had sworn to enforce!

I know, from actual contact with members of the prohibition force, that there has been a real improvement, much of it due to the fact that qualification under civil-service rules and regulations has been required since 1927. But there is room for much more improvement in training, and elevation of standards.

Long before 1927—in 1922, to be exact—I urged the establishment of a school to train agents, not only for the protection of law-abiding citizens, but for the assistance of the Department of Justice in prosecuting cases on evidence gathered by the Prohibition Unit. The plan provided for bringing all agents under at least three months' systematic and intensive tutoring by experienced investigators and lawyers who had tried cases in court. The details were all worked out including the selection of qualified men already in government service who could give the training without waiting for an elaborate set-up and appropriations.

I made such a proposal because it was plain even in those early days that prohibition ultimately would be either respected and enforced or derided and disregarded, depending on whether the cases were successfully prosecuted, and whether the methods of gathering evidence were legal or so oppressive as to provoke the animosity and criticism of thoughtful citizens.

Outrages against law-abiding citizens have inflamed the public mind and done as much harm to orderly enforcement as anything else. In most instances they have been the result of lack of intelligence, or lack of training, rather than any criminal intent on the part of the agents.

It is unfair to the agent himself to take a young impulsive fellow, give him a gun and say in effect: "Now bring us in bootleggers." I well remember the pitiful fright of a twenty-two-year-old youth who was sent on his first case with some older agents to a bad spot on the water-front. The agents attempted to arrest some foreigners who threatened them. The youth was terrified. He began shooting wildly. An Italian bystander was wounded. The agent was arrested. He and his mother came to my office begging the protection of the Federal Government. He was wrong. I couldn't legally defend his official conduct. But who was to blame—that poor, frightened, twenty-two-year-old boy, with his life ruined, facing a trial in a hostile state for assault with intent to kill—or the politically strangled or indifferent higher-ups who turned him loose with no preparation except a gun he didn't know when or how to use?

Of course, I had not been in charge of prosecutions under the prohibition law more than a few months before I realized what many people since have acknowledged: that hundreds of prohibition agents had been appointed through political pull and were as devoid of honesty and integrity as the bootlegging fraternity. I found that there were scores of prohibition agents no more fit to be trusted

with a commission to enforce the laws of the United States and to carry a gun than the notorious bandit Jesse James. Among the evidences of this fact that early reached me was this letter from a Judge known throughout the country as an upright, fearless, able jurist:

"More intelligence ought to be used in selecting prohibition agents. The majority of them in my district are stupid, and on the witness stand under cross-examination conducted by highly paid and able lawyers for the bootleggers, they crumple up.

"In my court room an agent testified that between the seventeenth of October and the first of November, about fourteen days, he drank seven hundred glasses of alcohol and seven hundred glasses of moonshine whisky. That was a period of fourteen days, and when fourteen hundred is divided by fourteen, it will be reasonably clear that he did not drink any such quantity. But if he only drank a fraction of that amount it would be sufficient to destroy his usefulness. This situation can not be permitted to go much further because the judges are losing confidence in the integrity and veracity of the Government's witnesses."

The first civil-service weeding in 1926 resulted in retaining far more well-meaning but incompetent men than those who were actually corrupt. The force has always needed, and still needs, systematic and extended training on such subjects as how legally to gather sufficient evidence, when

books and papers can be seized, when a defendant should be put under arrest, what facts are needed for the issuance of a search-warrant, and under what circumstances an agent is justified in shooting. There are, of course, many other subjects on which instructions should be given before a prohibition agent is allowed to exercise authority.

I worked hopefully with the training-school plan for months, but eventually it died in the mire of interdepartmental differences of opinion, division of authority and responsibility, and political interference with policies. The net results were just newspaper head-lines that all prohibition directors would call in agents and give them four days' training! In the last year some steps have been taken to train the special agents who work under the Assistant Prohibition Administrator. That has not been extended to enough of the force, however, to enable one to say yet that agents receive adequate training such as is given in other investigation services like the Special Intelligence Unit of the Treasury, Inspectors of the Post Office Department, and Bureau of Investigation of the Department of Justice.

To place on the rank and file of prohibition agents all the blame for past and present unsatisfactory conditions would be wrong. The responsi-

bility must be placed where it belongs—higher up.

It will take many a day, for instance, for law enforcement to recover from the setback it suffered from General Lincoln Andrews. I recognize that many people believe General Andrews to have been a martyr to the prohibition cause. He multiplied publicity; he created a public psychology in his own favor; but shortly after his appointment as "Generalissimo of Prohibition," as he styled himself, he began to put in office men who were temperamentally and in every other way unfitted for the task to which he assigned them. One of his most unfortunate appointments was Frank Hale. To the latter General Andrews gave unlimited control of the alcohol output in the whole New York territory. Hale had been in the service before, and had been suspended by the Commissioner of Internal Revenue after I had stated on four different occasions that I would not direct any United States attorney to conduct a prosecution on evidence he gathered, because of his unreliability. This opinion was based on facts reported from our field offices, now a part of official files, and later partially given to a senatorial committee.

Soon after General Andrews assumed office in the Treasury Department, X——, of Atlantic City, his close personal friend, took an unusual interest in

the difficult district of New Jersey. X—— wrote General Andrews to appoint Hale, because he said, "Hale is a good 'sojer,' nuff said." Subsequent circumstances indicated that shortly after Hale's appointment X—— entered upon a season of increased prosperity. Before Hale was appointed to the prohibition job, X—— had never deposited more than three hundred dollars in the bank at one time; but immediately after the "good 'sojer'" Hale was given unlimited authority by General Andrews, X—— began to make deposits of from one thousand dollars to five thousand dollars a month. These deposits grew into large sums. X—— died suddenly. The source of his quickly amassed wealth was never traced. Hale is now out of service, but General Andrews steadily increased his authority rather than limited it.

Another one of General Andrews' widely heralded appointees who left a devastating trail on prohibition enforcement is Major Walton Green. Major Green was made chief investigating officer, though his past record had been one of opposition to prohibition. The fact is that Major Green was a writer and not an enforcement officer. He spent much time in assembling material which has been used in preparing articles that have had wide circulation. But much of the information collected by

Major Green was of the stuff of fairy tales. And though, as I have pointed out, he had no adequate past training or experience qualifying him to make generalizations on the way to succeed in assembling evidence to enforce prohibition, his subsequent, repeated inferences that "it can't be enforced" have carried weight simply because he held a high official post. The psychological damage he has done this country by constantly presenting an unreliable picture of the whole enforcement problem is a big factor in present public pessimism on the subject of prohibition.

A further utterly demoralizing appointment of General Andrews was that of another military man named Green. This one was Colonel Ned M. Green who served as prohibition director in San Francisco. He was an old army friend of General Andrews, and publicly boasted of being a "sport" and a hard drinker. That was his outstanding qualification for so important a post. Of course he degraded the office. He was indicted and tried on the charge of unlawful diversion of government property which came into the possession of agents working under him. A jury acquitted him. General Andrews then recommended that Colonel Green be reinstated, given back pay and that the government pay his expenses for a trip to Washington.

But David H. Blair, then Commissioner of Internal Revenue, saved the government's honor by stopping such a proceeding. He called General Andrews' attention to the flatly contradictory statements Colonel Green had made at various times under oath as to illegal use and possession of intoxicants, his frank admission of misappropriating contraband liquor and concluded his rebuke to the General by stating:

"I can not bring myself to believe that we ought now to put our stamp of approval on such conduct just because Colonel Green happens to be acquitted in a criminal case."

These illustrations show that the harm that has been done to the cause of effective prohibition enforcement is not all properly attributable to the men in the lower rank. They have lacked training and judgment and many have yielded to temptation. But prohibition has been dealt its hardest blows by those at the head or near the head of the enforcement organization.

I am not saying something now that I did not dare to say before. The fact is that I wrote regarding General Andrews' appointments to the Attorney General on August 2, 1926, over three years ago, as follows:

"I feel that before this Republican administration faces another campaign, something must be done about the prohibition situation throughout the country. It is now marked by such inefficiency and lack of training that the public is losing confidence in the sincerity of effort. In my judgment, failure to succeed in as high a *degree* of enforcement as one might wish will never be fatal to any administration; but continuing to place the reins of responsibility in those exhibiting hopeless lack of training will prove *unexplainable*."

Shooting illegally is inexcusable. But even more inexcusable, in my judgment, is the incompetence of "chiefs" who place authority and weapons in the hands of untrained, unfit men, many of whom have been given their jobs merely as a reward for petty political service.

The mere fact that there is now provision in law for civil-service examination to govern appointments will not of itself cure the ills of enforcement. While standards have been improved, they ought to be greatly raised and the tests made more practical so as to bring to the Prohibition Service men of the same high caliber as the Postal Inspectors, the Special Intelligence Service of the Treasury Department, the Bureau of Investigation of the Department of Justice, and the Secret Service. Basic salaries are not out of proportion to other positions but opportunities for advancement should

be made more alluring in the Prohibition Service.

Other government services have been getting the right kind of men for years, and they have trained their men intensively and effectively. United States attorneys all testify to the quality of evidence they assemble. I refuse to believe that out of our one hundred and twenty million population, thirty-five million eligible adults of whom can be reasonably counted as favoring prohibition, it is impossible to find four thousand men in the United States who can not be bought. I insist there are plenty with sufficient basic character and intelligence to gather by strictly legal means, proper and dignified evidence for prohibition enforcement and prosecution. I know a pride of service must be nurtured. It is developing in the small group of special agents directed from Washington and in the districts of some of the able administrators. It should be further developed.

The prohibition law can be properly and effectively enforced. But courage, vigor, intelligence and experience must begin and exist at the top and spread down. Until then, the country will continue to be influenced against prohibition by the acts of incompetent agents, but thinking people should not blame the end men.

CHAPTER IX

KILLINGS IN PROHIBITION ENFORCEMENT

"Is it necessary for prohibition agents to kill one hundred and thirty-five persons in the course of less than ten years in order to enforce prohibition?"

Such a question is often asked.

I might ask another pertinent question in partial reply:

"Does the killing of fifty-five agents of the prohibition unit in the same period, the killing of six federal Coast Guard officers and the crippling of six others for life, and the killing of three narcotic enforcement officers and nine customs agents, indicate the necessity for the use of arms and force by officers of the government dealing with a vast class of desperadoes engaged in criminal violations of the nation's laws?"

But I have no desire to evade the issue.

I not only believe, I *know*, that the violence which has accompanied enforcement or attempted enforcement of the prohibition law, has done much

to instil in the public mind the question and the doubt: "Can prohibition ever be enforced, and if so, is it worth the price in human life and the violation of personal and property rights?"

I also know, however, that all the facts about the violence that has attended enforcement of the prohibition law have not been adequately and properly submitted to the great body of the American people who are the jury which in the end will return a verdict on the enforceability of the Eighteenth Amendment.

If I thought that enforcement of the prohibition law would necessarily entail continued killing and other acts of violence, as well as the outrage of private rights of persons and property, I would unqualifiedly join in the demand for the repeal of the Eighteenth Amendment and the laws enacted thereunder.

I condemn as atrocious, wholly unwarranted and entirely unnecessary some of the killing by prohibition agents. But I know that there are equally shocking cases of gangsters' attacks on agents, which if as widely known would influence fair-minded people not to be too hasty in forming an opinion against enforcement and lavishing sympathy on violators of the law who get wounded in the course of arrest.

As a sample of how the bootlegger deals with citizens who stand in his way, this touching letter to me stands as mute evidence:

“Dear Madam:

“I understand that my husband wrote to you some time ago about prohibition law and the agents you sent here told those, the wholesalers, about him writing to you, so the wholesalers went to the priest on the 4th of April. This priest called on my husband and warned him that the wholesalers would make a lot of trouble. Just four days after that they murdered my husband, Eugene Costa, and left me with five little children. My husband fought for his country during the World’s War. And it took a foreigner to murder my husband over beer and whisky. If you sent someone in I will explain it better. If you think it would be better for me to come there, please tell me when and how. For I am broken hearted.

“Kindly pay special attention.

“Mrs. Eugene Costa.”

Take also the case of Tom Morris, deceased. His family now know that in enforcing the prohibition law, agents of the government are not dealing with mere “good-hearted boys” who meet a public demand for liquor.

He with another officer stopped a car which was crossing the border loaded with liquor. After making the arrest and putting handcuffs on one of the men who had been in the car, the other said,

"Wait a minute till I light a cigarette." The officers "waited a minute," but instead of lighting a cigarette, the rum runner pulled a gun and shot Morris, who died almost instantly. His assailant then ran, and the surviving officer shot at him but missed. Subsequently captured and convicted, he was given only a prison term of from two to twenty years.

These bootleggers were the type ordinarily engaged in running liquor between Texas towns. Nothing in their appearance gave the agents warning. They were no better and no worse than thousands of other bootleggers who are operating daily in all parts of the country. And let it be remembered that the man who committed this act of violence was himself in no great danger from the law prior to the shooting of the customs officer. He was subject to a penalty at most of only six months and a few hundred dollars' fine after conviction. Nevertheless, in an attempt to avoid facing that charge he shot down and killed an officer of the law.

The cases cited are not at all unusual. On September 26, 1928, a prohibition agent named King stopped an automobile crossing a bridge at Jacksonville, Florida, and arrested one whom he identified as a bootlegger in charge of the load of

liquor. When the agent stepped on the running board of the car, the bootlegger pulled a gun and shot the agent who fell into the road. Wounded as he was, King nevertheless managed to draw his own gun, and as the bootlegger started to drive away a running battle occurred in which Agent King killed the bootlegger. A disinterested workman on the bridge told the facts. While the agent lay at the point of death in a hospital, the state authorities, as the result of sensational and unwarranted press reports which inflamed the public mind, and following threats of death from the deceased's associates, endeavored to obtain an indictment for murder against an officer who had risked his life in the performance of his legal duty, and who had not shot until after being thrown in the road, wounded, and then only in self-defense.

I might cite dozens of other similar cases, but I will call attention to only one more. It is the case of the *United States of America v. James H. Alderman*, charged with and convicted of murder and since executed. The conviction was upheld by the United States Circuit Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States refused to review the case. The facts are these:

On August 7, 1927, a United States Coast

Guard patrol boat, on duty off the coast of Florida, stopped a small boat coming from the direction of Bimini in the British West Indies and headed toward the Florida coast. On boarding the boat, the Coast Guard Commander, Sidney C. Sanderlin, found one James H. Alderman in charge, with Robert K. Weech aboard, together with twenty sacks of liquor. Of the Coast Guard boat crew, only Sanderlin was armed. He searched Alderman for weapons and found none.

While the Coast Guard crew was transferring the liquor from the small boat to the Coast Guard boat, Sanderlin started toward the pilot-house of the patrol boat where his wireless was located, and Alderman followed him. A moment later the Coast Guard crew heard shots and saw Alderman, an automatic in his hand, take a step or two from the pilot-house door and shoot at a member of the crew named Lamby. The shot struck Lamby and he fell into the engine room. No one saw Alderman shoot Sanderlin; but afterward Sanderlin was found dead on the floor of the pilot-house, killed by a bullet which entered the right side of his back, passing through the heart and coming out of the left breast. Lamby died four days later in a Florida hospital.

Alderman, the bootleg runner, then lined up the

remainder of the Coast Guard crew and menacing them with his revolver, said that he was going to "get" the rest of them. He then directed his own companion, Weech, to get the liquor back aboard their boat, tear out the gas pipe of the patrol boat and set it afire. Alderman told the patrol crew that he was going to throw them overboard one at a time and shoot them, and that they might as well say their prayers, because they were all going to hell and they would need them.

Meanwhile, he had secured two more revolvers from the pilot-house and had given one to his associate, Weech, so that the prisoners were covered by three guns. A few minutes later, when Alderman glanced down the hatch to see what Weech was doing with regard to the motor which he had ordered him to start, the surviving members of the Coast Guard crew took advantage of his momentary inattention, and rushed toward Alderman, who began shooting. He succeeded in shooting one of them through the shoulder and head, and in killing another. However, the others overcame Alderman and later captured his associate, Weech.

I have outlined the facts in this case to show what vicious criminals are in the bootleg business, and the risk of his life that many an agent runs.

It is the officer's duty to make arrests. The law gives the arrested man every presumption of innocence and much legal protection, including the right of trial by jury. But he must go peaceably with the arresting officer to the nearest magistrate for hearing. Resisting an officer is a serious offense. It has been such ever since governments were established. It has been the duty of all sworn officers of the law to bring in their prisoners "dead or alive." That has always, since the days of Blackstone, been regarded as vital to the protection of society and the preservation of the state.

In dozens of cases, hundreds in fact, arrested bootleggers are resisting with force and with guns officers of the law who have the legal right and the duty to make the arrest and are discharging that duty lawfully. In no other class of cases has there been so much resistance to officers. Every day, in some part of the United States, men are arrested by state and federal officers for burglary, robbery, arson, mail robbery and other crimes for which the penalties are much more severe than those imposed for bootlegging. Yet there is no such resistance to the officers as in bootlegging cases, simply because the men arrested know that they will get no public or newspaper support if they attack or kill the officer of the law. But let resistance be made to a

prohibition agent in the lawful performance of his duty, and there is an immediate rallying to the defense of the bootlegger by those who are opposed to prohibition enforcement "on general principles." Are we losing our sense of proportion when the arrest involves liquor?

While I condemned without qualification unjustified use of firearms in the enforcement of the prohibition law, as well as any other law, I think no one who is fair-minded will disagree with this editorial statement of the *Los Angeles Times*:

"There seems to be a good deal of over-emphasis for wet propaganda purposes of such regrettable affairs as the slaying of Jacob Hanson at Niagara Falls and of Henry Virkhula at International Falls, Minnesota. If either man had been killed by a policeman who mistook him for a burglar, the case would have been dismissed, so far as national public interest is concerned in a few lines of press, and it is inconceivable that it could have become a subject for Congressional discussion."

Nevertheless, it was my opinion in 1921, and it still is, that the government is committing a crime against the public generally when it pins the badge of police authority on, and hands a gun to, a man of uncertain character, limited intelligence, or without systematic training for the performance of duties that involve the rights and possibly the lives

of citizens. It has been my observation that practically all of the unwarranted shooting is by untrained agents.

For this defect of prohibition enforcement, the remedy is obvious and simple—put every agent who is appointed through a thorough course of training and on a probationary period of working with seasoned investigators.

CHAPTER X

POLITICAL PATRONAGE V. PROHIBITION

I HAVE already said something about the disastrous effect of political interference on prohibition enforcement.

But it is only by emphasizing the condition, through a multiplication of examples, that I can convey an adequate sense of the relation between political manuevering and prohibition weakness.

I have been told, times without number, by people who originally favored prohibition, "Why, it never can be enforced because the men who are enforcing it are among the worst offenders!" Of course that is not wholly true, but it is true that enough agents have offended to give bad odor to the force.

In the beginning and during five or six years following, the prohibition enforcement force was composed very largely of men of the ward-heeler class. Appointments of prohibition agents were, until 1926, made as the result of political endorsement. The frequent reward for polling precincts,

getting out the votes on election day, marking and stealing ballots, "slugging" the opposition poll watchers, and generally being useful in operating the machinery of politics, was appointment as a prohibition agent.

I have in mind an example of the type of men who constituted too large a proportion of the whole prohibition force until recently. This one lived in one of the larger cities of the country that has struggled with corrupt government, not only since the adoption of the Eighteenth Amendment but for thirty or forty years preceding.

The man's education had been limited to a few years in graded school. Afterward he held various jobs calling for no special knowledge, skill or training until he secured, as the result of activity in ward politics, an appointment as deputy constable in a justice-of-the-peace court. His principal duties were the serving of summons and the seizure of property to satisfy judgment. Next he became a candidate for justice-of-the-peace, but was defeated. However, he continued to make himself useful in his ward during elections, and due partly to this and partly to the influence of a relative—a lawyer whose clientele consisted largely of boot-leggers, and who had been useful for years to the political bosses of both parties—the ex-constable

secured an appointment as prohibition agent. Within a year or two he was under indictment for conspiring with bootleggers for the distribution of large quantities of liquor.

There is nothing new about this alliance between politics and the liquor traffic. It is not the result of prohibition. It is merely the continuance of an alliance that was born generations ago and grew stronger during scores of years before national prohibition was even dreamed of. Efforts to enforce prohibition are revealing it more clearly every day.

Every politician who was in politics for the money that could be made out of it—and the number of such men was legion long before we had national prohibition—saw the greater opportunities for graft in the initial stages of attempted enforcement of the Volstead Act.

Sheriffs, who had been making five or ten thousand dollars a year in addition to their salaries by collecting from the county two or three times the actual cost of feeding prisoners, set up toll systems by which trucks loaded with contraband liquor were passed through the lines of their deputies patrolling county roads, on payment of fees of from ten to several hundred dollars a load.

These men were not corrupted by or because of

the Eighteenth Amendment or the Volstead Act. They were the same men and type of men who collected graft from the speakeasies and blind pigs operated when saloons were legally licensed, and who also collected from the saloons themselves for suppressing or overlooking violations of midnight-closing or Sunday-closing laws. Any one who was engaged in politics in the years before prohibition, as I was, knows that in the pre-Volstead period, just as now, mayors, governors, congressmen and senators—Democratic and Republican alike—were dependent for their election on the smaller politicians with their large forces of deputies and assistants available for registering and voting indifferent citizens. All of these constituted the political machine.

So it was on the recommendations of ward and county bosses that congressmen and senators secured the appointment of hundreds of prohibition agents and administrators. And it was the opposition of the politicians, big and little, that prevented the use of civil-service examinations to select the enforcement personnel during the first six years after the amendment went into effect.

I have no hesitancy in asserting that it is the continued influence of politicians, little and big, that still keeps in the service either men who have

managed to qualify under civil service but who are entirely unfit, or those who have not qualified but are working under temporary appointments that know no end.

The fact is that in March, 1929, according to a report made by the acting Secretary of the Treasury, there were still employed more than six hundred prohibition agents, inspectors, investigators and chemists who were holding so-called temporary appointments without examination. This was practically one-third of the total number of prohibition employees. There is undoubtedly justifiable excuse to hold over on temporary rolls *some* of them, but the political appeal of senators, congressmen and party leaders is behind too many of them. It would be much better for the prohibition service, if not enough prohibition agents have qualified yet on civil-service rolls, to make the appointments from other services that already have civil-service rating, like the skilled Special Intelligence, Postal and Secret Service groups. This would build up the force from men already trained.

The influence of politicians in defeating real enforcement extends far beyond the appointment of unfit agents. It permeates the courts of justice. Dozens of United States district attorneys and assistants owe their appointments to the favor

of not only congressmen and senators but of the whole political machine ranging up from deputy constables and assistant assessors to mayors and councilmen. Some United States attorneys and their assistant attorneys have been promoted from city and county attorneyships and state attorneyships, partly in recognition of, and reward for, services well and truly rendered to so-called legitimate liquor interests in the palmy days of the open saloon. In their former capacity they had ignored apparent violations of law. When public sentiment in the town or county became aroused and demanded action, they prosecuted in an "easy" fashion, failed to summon important witnesses and failed to secure conviction or strive for just penalties. They were even before prohibition prosecutors whom the alcoholic interests and politicians regarded as "reasonable."

Scores of politically appointed prohibition agents whose testimony was essential to conviction have been either incompetent, afraid or corrupt. These ward-heeler agents, in many cases, fail to obtain proper legal evidence, or obtain it in an illegal or improper manner so the case has to be dropped. At other times they have conveniently lost their memories for essential details. Still more often they have told a different story on the wit-

ness stand in the trial of the case than they embodied in their original report. Dozens of cases have been lost because the evidence was secured on defective search-warrants, and it has been apparent later that the defects had been bought and paid for.

We lost cases because politically appointed marshals assembled questionable juries or failed properly to guard juries to prevent tampering and bribery or the exertion of political influence. We failed to obtain convictions, even where the Prohibition Unit furnished us with competent and sufficient evidence, because politically appointed district attorneys, who were less lawyers than politicians, had established definite schedules of fees for what came to be known as nolle-prossing liquor cases. Time after time they dismissed cases without trial because of an alleged want of proper evidence, disappearance of witnesses, et cetera. Bootleggers in one western state advertised that the standard fee was fifty dollars in ordinary small cases thus dismissed. District attorneys finally were required to secure authority from Washington before entering an order of nolle prosequi. When definite reasons thus had to be given for the recommendation to dismiss, there was a surprisingly large reduction of the number of nolle prosequis!

On the other hand there shine forth the out-

standing examples, among many others, of such faithful officials as Commissioner Dan Roper and Congressman Andrew Volstead who started prohibition enforcement work on its course in the Democratic administration, Alf Oftedal, Elmer Irey, Commander J. D. Pennington, Major Maurice Campbell, William R. Woods, William D. Moss, William G. Walker, Captain R. Q. Merrick, Thomas Stone, and more than a hundred splendid officers and agents whose work I personally know, now connected with enforcement in the Treasury Department, and such hard-hitting United States attorneys as Richard H. Templeton, George E. Q. Johnson, George Neuner, Delos Smith, Sterling Carr, Charles L. Redding, James C. Kinsler, S. W. McNabb, A. E. Bernsteen, Haveth Mau, Harold Baker, George Hatfield, Clint Hagar, Paul Karr, Walter Provine, Sawyer Smith, A. V. McLane, and the men in Washington working with Norman J. Morrisson and Howard Jones of my own division in the Department of Justice. The men of our "Flying Squadron" have rendered distinguished service by going from Maine to Arizona—anywhere—to rescue and try important cases where it was apparent the evidence was about to drown in a sea of politics! In thinking over the personnel there are far more loyal and efficient officials than

can be noted in this space. I wish I might name the whole roster. It would hearten the discouraged. For many have made distinguished battles against politics.

During the short time that Justice Stone was Attorney General he probably won for all time the record for cleaning out more politically evasive Department of Justice officials than any one else in a similar period.

Pop! Pop! went his guns almost every day. Frequently politicians were hit. In looking over the great volume of memoranda of facts, cases and specific conditions I alone reported to him during the months of November and December, 1924, I am astonished at the volume of executive work he disposed of daily. He reorganized the prosecuting offices in Massachusetts, New Jersey, Montana, northern Mississippi, southern Alabama, southern Georgia, eastern Louisiana and northern California, and was well started on many other districts when he had to leave it all to take the higher post on the Supreme Court bench. He exemplified the fact that clearing dockets and effective law enforcement all come back to a proper exercise of the appointing power, especially of the men in more responsible positions. Proper officials simply spell successful enforcement.

Particularly during the past two or three years, the politicians have been pried loose from a great deal of their former control over appointments and removals, over administration of and prosecution under the prohibition law. All the cure for political interference with honest prohibition enforcement can not be applied at Washington, however. It will have to come through the mass of the people in the rural districts, in the towns and in the cities performing their basic obligations to vote regularly and intelligently, organize effectively and *watch public officials' records.* In that way, they can evict the cheap politician and liberate clean government, which he despoils.

CHAPTER XI

ARE CONGRESSMEN ABOVE THE LAW?

UNDoubtedly a large number of people, perhaps several million, who were originally in favor of national prohibition—or at least willing to give it a fair trial as a worth-while experiment—are now opposed to it.

Some simply have succumbed to the constant reiteration of the statement, "It can't be enforced."

Many others, however, have been antagonized by the discovery that the very men who made the prohibition law are violating it, and that many of the officers of the law sworn to enforce the prohibition statutes are constantly conspiring to defeat them.

This attitude of a substantial portion of public sentiment is reflected by a question I often was asked: "How can you have the heart to prosecute a bootlegger, send a man to jail for six months or a year for selling a pint or a quart of whisky, when you know as a fact that the men who make the laws and appropriate the money for prohibition are themselves patronizing bootleggers?"

The only reply I could make to this was that I had taken an oath to enforce the law, and enforce it I must to the best of my ability, regardless of my own disgust with the hypocrisy of personally wet politicians who vote dry.

I have not lived in Washington all these years without becoming well acquainted with the fact that many congressmen and senators who vote for bills designed to aid prohibition enforcement are persistent violators of the Volstead law. Senators and representatives have appeared on the floor of the Senate and House in a drunken condition. During the closing days of a recent session of Congress, one Senator objected to and prevented the passage of important legislation while in such a condition of intoxication that he had to hold to his desk to keep himself upright. Colleagues argued with him in an effort to persuade him to leave the chamber, but he refused. His condition was apparent to every member of the Senate who was present and to hundreds of people in the galleries.

I think that probably nothing has done more to disgust and alienate honest men and women who originally strongly favored the prohibition amendment and its strict enforcement than the hypocrisy of the wet-drinking, dry-voting congressmen.

Bootleggers infest the halls and corridors of Congress and ply their trade there.

It is not the duty of the Department of Justice to "make" cases; its duty is to prosecute cases in which evidence has been gathered by the Prohibition Unit of the Treasury Department. Congress makes all the appropriations for evidence gathering to the Treasury Department. So I had no agents working under my direction whom I could command to gather the evidence. But I did urge that the Treasury Department direct agents to investigate all cases thoroughly, even though such investigations might lead into the halls of Congress; and I guaranteed that if real evidence were found, the Department of Justice would prosecute the case just like any other, either through United States attorneys' offices, or by men specially assigned from my office.

Why have no search-warrants ever been issued to rout bootleggers in government buildings? I know of no reason in law to prevent searches and seizures for law violations in the Capitol or in the House and Senate Office Buildings. As a matter of fact, it is my opinion, as a lawyer, that the constitutional immunity protecting a member of Congress from arrest does not apply to criminal offenses committed by him, and that upon a proper

showing of probable cause a warrant may be issued for the search of the office of such member, either in the Capitol or in the Senate and House Office Buildings, and for the seizure of contraband articles found therein. I know of one agent who tried to secure such a search-warrant, but was advised that no warrants could be issued to search any place at the Capitol. That is bad law and bad policy. I believe in using all legal steps for the enforcement of the prohibition law against members of Congress and those who supply them with liquor, to the same extent and with the same degree of diligence as against any private citizen and his source of illicit liquor. I believe so to enforce the law would command public respect.

I have found, however, a curious impression or state of mind among members of Congress and other government officials, to wit: that they are above and beyond the inhibitions of the prohibition law. Their attitude would be amusing if it were not so tragic in its effect upon the great mass of people who abhor the hypocrisy manifested by dry-wet officials. There is, for example, no legal requirement for extending "freedom of the port" or special privileges of that character to congressmen returning from abroad. Yet during the fore-part of 1929 a Congressman wrote to the Under-

Secretary of the Treasury requesting freedom of the port on his return to the United States, and the request was granted. The customs collector at the port of entry was told by his superiors in Washington to "extend the usual customs courtesies and free entry privilege" to the Congressman. Later, the metropolitan newspapers made much of the dispute that arose as to whether there was liquor in the Congressman's baggage.

When Congressman Michaelson, another whose case brought "freedom of the port" into public attention, landed from abroad he declared fourteen pieces of baggage. He was accompanied by four other people, one of whom declared three pieces of baggage and the other six. Although the Congressman was granted free entry privileges without examination of his baggage at the time of landing, he was asked if he had any liquor, and he replied that he did not.

Of the nine trunks brought in, by the members of the party, three were checked to Washington and six to another destination from which they were rechecked to still another point. Before they were reshipped from the first terminal, however, they were seized and searched. One trunk contained nothing but a barrel of rum, the interior of the trunk having been cut so that the barrel rested

neatly in a hole in the tray made for that purpose. One trunk, which was found to be empty, was likewise cut, seemingly to accommodate a keg of the same size. A third trunk contained wearing apparel, in which were packed twelve bottles of assorted liquors, and there were the remains of another bottle which had broken. It was the leakage from this broken bottle that attracted attention to the trunk and caused the seizure.

A few days after the seizure the Congressman came to the offices of the head of the Prohibition Unit in Washington and demanded release of the trunks. The trunks were released, but the liquor was retained as evidence.

The Congressman was indicted but subsequently received an acquittal from a Florida jury. He denied knowledge that the trunks contained liquor. On the other hand, his brother-in-law, who had been a member of the party entering the port, testified that the trunks seized belonged to him and another member of the party and not to the Congressman. He refused, however, to answer questions which might incriminate him.

In another case involving a Congressman entering the port of New York, the members of the grand jury of the Southern District of New York made a statement from which I quote:

"We regard it as un-American and contrary to the fundamental principle of equality before the law that any citizen, merely because he is a congressman or other official, should be exempted from inspection of baggage or from the operation of law or departmental regulations, while others who are merely part of the plain people, are required to submit thereto. On the contrary, public officials should be the first to set the example of scrupulous acceptance and observance of the burdens of the law. While under the technical rules of the criminal law and in view of the non-examination of the baggage following the grant of free entry, a criminal prosecution may not be possible in this case, nevertheless an official who prevented examination of baggage by claim of free entry and by threat of causing trouble in Washington can not complain of the consequences when weighed in the forum of public opinion."

I think that every citizen, whether wet or dry, will agree with that excellent statement of principle. Until politicians are made to obey the laws which they enact, we can not expect respect for the law by those who are opposed not so much to prohibition as to hypocrisy.

How greatly disregard for our laws by our own legislators contrasts with the attitude of Sir Esme Howard, English Ambassador! As ranking member of the diplomatic corps, he gave evidence of a sportsmanlike respect that the law does not compel, when he made public declaration early in 1929 that

he stood ready to abide by the Constitution and laws of the United States—though legally immune, as a diplomat, from their operation—and would authorize no more importations of so-called “diplomatic liquor” by members of his embassy staff.

I believe that one of the first steps necessary to rebuild public respect for the prohibition law is to enforce it against those in official life whose personal conduct shows their disrespect for the law. I know of no better way in which to reestablish such public respect than for the friends of prohibition, and law-enforcement organizations generally, to take the legal and legislative steps necessary to remove from public office those who have been unfaithful to their oaths.

Constables, marshals, sheriffs, mayors, state legislators, congressmen and senators, alike, should either obey the laws which they make or which they have sworn to enforce—or they should be denied the right to take that oath.

CHAPTER XII

ARE THE CITIES HOPELESSLY WET?

THROUGHOUT the country there is a prevalent opinion reflected by the remark: "It is easy enough to dry up the country and the small towns, but you never will succeed in drying up the big cities."

This belief has some foundation in fact. The great bulk of the liquor traffic, as every one knows, is in the larger cities. And that that traffic is of enormous size can not be disputed. I have often been asked, "How wet is the country under prohibition? What amount of liquor is being sold; how many bootleggers are there in business?"

These questions can not be answered exactly, of course, but we know that bootlegging is certainly far from being one of our "infant industries." We have certain definite evidence as to the size and state of the industry. A Chicago lawyer, who became one of the most extensive and successful masters of bootlegging, according to his own sworn statement was worth, prior to entering upon his adven-

tures in lawlessness, about eight thousand dollars. After only thirteen months of illegal liquor operations, he was worth more than three million dollars according to a sworn statement he gave to a bonding company. This amount of money, of course, could not have been made so quickly in anything but the larger metropolitan centers. The big whisky markets always have been and always will be in the cities.

With the liquor operations are often combined other big city grafts. For instance, the United States Attorney at Chicago recently called my attention to accounts seized in the Chicago Heights raid. These records constituted the bookkeeping of income from slot-machines only and not from prohibition violations. The revenue over a period of three years, according to the books kept, was approximately \$725,000 a year from the machines. This represented the result of slot-machine operations in an area where there reside not more than one hundred thousand people, a small suburban city in the southern part of Cook County. The record sheets that were seized showed in detail the revenue from each machine, and the division of the profits among the five racketeers who controlled this form of lawlessness.

The District Attorney, Mr. Johnson, said to

me, "I have often wondered what the total figures might be, since there are about four million people in this country, including Chicago, if every one hundred thousand population produced accordingly." We can only guess the aggregate profits from all the rackets in and near Chicago, but based on the spoils from slot-machine operations alone, the total profits in a year's time, including revenue from bootlegging, the operation of disorderly houses and protected gambling establishments, would amount to twenty-five million dollars or more a year.

The number of millionaires created by violation of the prohibition law is amazing. In one case, for instance, which involved six bootleggers, we found that in three years they had evaded paying taxes and had built up fortunes of such magnitude that they owed the government the following amounts in taxes: one of them owed \$1,300,000, (that is the tax, not the money he made); another owed \$280,000 in taxes, another \$415,000, another \$312,000, the others \$72,000 and \$33,000, respectively.

Evidence in the "Big Four" conspiracy case at Savannah, Georgia, revealed the fact that in three years a ringleader of the bootleg industry derived such profits from the importation of liquor and other illegal operations that he was reassessed for

income taxes in the sum of \$1,243,254.29. Another owed \$301,816.09. Lesser fry in the organization had dodged taxes ranging from \$245,000 to \$53,000.

Because of all this ready money and the great value of the city vote in elections, there always has been what amounts to a marriage between legal liquor vendors, their successors, the bootleggers, and corrupt politicians.

With possible profits of enormous proportions, it will be seen why the task of prohibition enforcement is one of such magnitude. And the fact that those tempted to engage in bootlegging and allied activities know very well that even if apprehended the congestion of court calendars probably will give them many months to temporize and use political pull, or in the end opportunity to plead guilty and be "rewarded" with a fine of only a few hundred dollars or a term of only three or six months in jail, explains why the forces of lawlessness never lack for recruits.

Let me demonstrate, however, that the chances for law enforcement in the big cities are far from hopeless.

Such men as Mr. Johnson, the United States District Attorney in Chicago; Roscoe Patterson, former United States Attorney in Kansas City,

Missouri, and now senator from that state have proved that where there is determination to enforce the law, coupled with legal ability and high personal integrity, prohibition can be enforced like any other law to curb the operations of the criminal element of society.

The prohibition law has not given birth to any new element of lawlessness. It simply has attracted those who would in any event try to "beat the law" in some illicit scheme designed to bring big returns in money. The proof of this lies in the fact that the names of Al Capone and others of his gang run through various cases involving all of the many rackets. The same men who are involved in Chicago in the trade-union extortions—by which legitimate business organizations are forced to pay tribute or have their places blown up and their employees slugged—are at the heads or in the ranks of the big liquor rings and involved as well in the slot-machine graft, and the election-fraud cases. The type of men who descend in a swiftly moving automobile on the garage which is the headquarters of a rival liquor gang and exterminate them with a machine-gun is the same as that involved in kidnapping the poll watchers of the opposition party on election day, taking them to a deserted house and killing them with a volley from sawed-off shotguns.

And so, war has not been made alone on the bootleg ring. Attack has been made on the whole army of the lawless.

The situation in Chicago exemplifies the difficulties in many other large cities. In the same county are ninety-two smaller communities. To one of these, Chicago Heights, there were sixty murders attributable in five years as a result of gang wars.

But when the wheel of political fortune brought into office an honest, efficient and determined United States Attorney, and at the same time a State's Attorney of like character, law enforcement became far from a hopeless task. The information and assistants of each prosecuting officer's staff were freely exchanged. There was a coordination of effort similar to the coordination and welding of the Allied armies in the World War. Whenever and wherever the forces of the law begin to work together instead of at cross-purposes or in an unrelated manner, worth-while results are bound to be achieved. So, in Chicago, the influence and investigations of the State's Attorney secured the revocation of the licenses of 1,400 soft-drink parlors, 2,854 speakeasies,—places which had furnished a large part of the work for federal officers charged with prohibition enforcement. The United States District Attorney, with his limited force of assistants

and investigators, and with only one out of three federal judges available for trying criminal cases, could not hope to deal effectively with the racketeer gangs operating in the ninety-two smaller communities of the county. But the County Attorney, with his larger staff and indirect control over thousands of police, sheriffs and constables, could help to enforce not only the national prohibition law but also the state liquor law, and the other Illinois statutes which supplemented or were akin to federal criminal statutes.

For instance, federal and state forces usually can cooperate in liquor cases, and those involving the stealing of automobiles, the robbery of drug stores and other places containing post-office substations, the possession or sale of narcotics, and robberies of, or embezzlements from, banks allied with the Federal Reserve System.

Then, too, when the state takes action where it has exclusive jurisdiction, such as in slot-machine gambling device cases, it often puts an end to illegal resorts which have also violated the federal prohibition law. And the crooks who always asked a jury trial in Chicago, knowing that either the state or federal court docket was so crowded that such a request would bring about long delay, under the new régime are often disagreeably surprised to find

that a federal charge is substituted for a state one, or vice versa, and the desire for a trial by a jury of peers is thus *promptly* "gratified." Promptness was anything but what they wanted.

For years, Kansas City, Missouri, was notorious as one of the wettest spots in America. One of the principal factors in that situation was Frank (Chee Chee) De Mayo, known far and wide as a "King of the Bootleggers." He operated not only in Kansas City; he supplied liquor through his organization to bootleggers in Oklahoma, Kansas, Missouri and other territory. He was bold enough to maintain an office in a building directly across the street from the Federal Building, the headquarters of the prohibition agents and the United States Court!

His operations were so conducted, through lieutenants and go-betweens, that the regular force of prohibition agents could not—or did not—establish proof of De Mayo's *own* connection with the large-scale bootlegging operations that were flooding Kansas City and the Southwest with liquor. De Mayo's spotters and tip-off men gave warning of every trap set for him.

But when Roscoe Patterson took charge of the situation, as United States Attorney, he determined to bring Mayo to face the law. His first step was

to secure the detail to Kansas City of the keenest men in the federal narcotic and prohibition investigating services. We exchanged many letters and telephone conversations over this.

De Mayo, himself, seldom handled either the money or the liquor. He largely directed the operations of a big force of makers and distributors of alcohol and whisky. Those who wanted liquor for wholesale or retail distribution might see De Mayo once, and by him be placed in contact with the members of his organization who actually handled the liquor and received the money. That made proof of his own guilt difficult to obtain.

But the special investigators wormed their way into De Mayo's confidence and obtained definite proof of his own participation in prohibition violations.

Even after the evidence was gathered, the fight had just begun.

De Mayo was tried not once, but *four* times. Every legal obstruction was interposed in his behalf by a large staff of skilled lawyers. Three times conviction was prevented by the refusal of one or a few of the jurors to agree on a verdict of guilty. Then additional investigations were made by Department of Justice operatives whom I finally was able to get assigned to the work, as well as

prohibition agents, and we secured the evidence of attempted jury tampering. The result was that when De Mayo again was brought to trial, the jury which had been carefully guarded from outside approach even before it was selected and sworn in, and which was sequestered during the trial, brought in a verdict of guilty. De Mayo was sent to the penitentiary for three years.

Such a prosecution has a moral effect even more important than the immediate result of removing one man from active participation in violations. When the dozens of little bootleggers see their "king" go to prison in spite of the protection of political leaders and of a swarm of high-priced criminal lawyers versed in every technical defense, the small crooks are frightened and either cease operations or seek other fields less dangerous. Furthermore the public is aroused to desire and support clean government.

It was the skill, ability, courage and bulldog tenacity of the United States Attorney in Kansas City, Roscoe Patterson, which brought the important De Mayo case to a successful conclusion. The skill and resourcefulness of the agents who investigated the case and furnished evidence for the indictment, would have been valueless without the services of a prosecutor determined to put guilty

men behind prison bars no matter how often it might be necessary to try the case to expose jury tampering and other frustration of justice.

Prohibition can be enforced in the big cities, if we can find more men of the type of Senator Patterson, of Kansas City,—and if public attention can be not only aroused and properly organized but kept vigilant.

It is hard to arouse civic consciousness. Education will do it.

Undoubtedly the cities are wet—but I am unwilling to believe they are hopelessly so.

CHAPTER XIII

PAST, PRESENT AND FUTURE OF THE CITIES

BECAUSE the problem of prohibition enforcement has been and will continue to be centered principally in the nation's cities, it is of vital importance to study the city situation minutely. Only by thorough analysis of the problems of city government can the remedy be found for conditions that not only prevent prohibition enforcement but prevent the enforcement and proper administration of other laws affecting the lives of millions of people. When I say cities, I am not thinking alone of such metropolitan centers as Cincinnati, Cleveland, New York, Boston, Philadelphia, San Francisco and Minneapolis, but also of centers of population of from forty thousand to one hundred thousand people or more.

Wherever there is a concentration of population sufficient to create a demand for liquor from a large class numerically—though practically always constituting a minority of the whole population—bootlegging becomes highly profitable if sufficient

political protection can be bought to make it reasonably safe. And bought it is! And too safe the purchase has usually become.

Public memory is notoriously short-lived. Because we now have a national law prohibiting *all* sales of intoxicants, the great body of citizens see only the inadequacies of present enforcement, and make no comparison with conditions prevalent before we set up a standard of national abstinence.

But any fair-minded person who is given an opportunity to make a study and comparison of the past and present conditions in the cities, as far as law violation is concerned, is bound to grant that actually there has been improvement under national prohibition, not alone in cutting down the opportunity and temptation to drink, but in ridding our cities of vice centers closely allied with the old saloon system.

He must grant, too, that the licensed liquor dealers were in politics long before the Eighteenth Amendment was ratified. In Kansas City, for instance, the wholesale and retail liquor dealers were at the head of the ruling Democratic city machine many years before 1919. Chicago, similarly, had as members of its city council and potent political leaders men openly associated with the organized liquor traffic.

A vivid description of the conditions that existed in many of the larger cities of the country before national prohibition was actively advocated by temperance leaders is to be found in a survey printed in *McClure's Magazine* for November, 1925. This is a partial picture of San Francisco in 1905:

"When Mayor Schmitz came before the voters of San Francisco as a candidate for re-election in the fall of 1905, it was perfectly well known to the reading and thinking people of the city that Ruef, the Mayor, and members of the municipal boards were blackmailers, extortioners, and thieves. It had been clearly shown by the Andrews Grand Jury as well as by investigations of the press, that the administration made a business of selling immunity to gamblers, prize-fight promoters and keepers of brothels; that the great house of prostitution at 620 Jackson Street was virtually a municipal institution; that the police were giving protection to notorious criminals and taking money therefor; that the municipal boards were blackmailing lawbreakers and compelling honest men to pay tribute; that the work of the city was given to dishonest contractors who divided their illegal profits with the officials who permitted them to steal; and that, with the exception of the Board of Supervisors, every branch of the city government was shamelessly and almost defiantly corrupt.

"All of the saloon-keepers, brothel proprietors, prize-fight promoters, pool-sellers and gamblers worked enthusiastically for Mayor Schmitz be-

cause he permitted them to violate law and gave them a 'wide-open' town. Ruef and the Mayor at that time were sharing in the profits of notorious brothels. From the French restaurants and two houses of prostitution, the gamblers of Chinatown, pool-sellers, and the Prize-fight trust, Ruef and the Mayor received, or were to receive, annually more than a quarter of a million dollars.

"But this was the revenue from only a part of the field that they were exploiting.

"Honest officers and men of the police force tried at first to do their duty; but the Police Commissioners, under the influence or direction of Ruef, interfered with their efforts to close illegal and immoral resorts; the police court judges, allowing themselves to be swayed by selfish political considerations, released the prisoners whom they arrested. Police Captain Mooney, for example, presented to the courts fifty-seven cases of saloon-keepers who were illegally maintaining side entrances for women, but he was able to get only one conviction."

Such were the virtues of municipal government *before* prohibition; yet the wet press now generally use, as one of their main and most effective arguments, the charge that prohibition has given birth to the corruption of city government and corrupted public officials generally!

That no one may be permitted to say: "Oh, well, San Francisco was just an isolated instance; the condition wasn't so general before prohibition as it is now," I quote further from Mr. McClure's

article, which was based on court findings and other authentic records:

"Immediately upon his fourth election, before he took office on January 7, 1901, Mayor Ames [of Minneapolis, Minn.] organized a cabinet and laid plans to turn the city over to outlaws who were to work under police direction for the profit of his administration. . . . These men looked over the police force, selected those men who could be trusted, charged them a price for their retention and marked for dismissal 107 men out of 225, the 107 being the best policemen in the department from the point of view of the citizens who afterwards reorganized the force."

It is then shown that under this régime, the disorderly houses of the city paid about seventeen thousand dollars a year to an agent of the Mayor, who was later indicted for extortion, conspiracy and bribe-offering. The Mayor's brother, who had been appointed as chief of police, was sentenced to six and a half years in state's prison.

Remember, please, that all this occurred in the early years of the present century, long before we had the allegedly corrupting influence of the Volstead Act!

A description of conditions in Chicago during the same period is equally interesting—and equally demonstrative of the fact that conditions which are

now attributed by a wet press to prohibition existed in far worse form and to an even greater extent in the "good old days."

This is the picture of Chicago:

"The sale of dissipation was not only a great business; it was among the few greatest businesses in Chicago. The leading branch of it was the sale of alcoholic liquor. The receipts in the retail liquor trade in Chicago ran well over \$100,000,000. There were 7,300 licensed liquor sellers in Chicago, and in addition about a thousand places where liquor was sold illegally. The only business which approached this in number of establishments, according to the Chicago directory, was the grocery trade, which had been about 5,200. The city spent at least half as much for what it drank as for what it ate—not counting the cost of the cooking and serving of food.

"The second great business of dissipation was prostitution. The gross revenues from this business in Chicago ran about \$20,000,000—and probably more.

"There were thirty-four captains of voting precincts in the First Ward. Half of these were proprietors of questionable saloons, and at least six were dealers in prostitution; the majority of the remainder were job-holders under the city administration. . . . Italian saloon-keepers, one of them an ex-convict, handled the Italians.

"The best and most business-like collection of payment for protection took place, naturally, in the greatest and best organized center of dissipation—Ward One. The junior alderman, 'Bath-House John,' as an insurance agent sold his policies not

only to saloon-keepers and houses of prostitution in the ward, but to the great business houses in the district. He also sold, through his business partner, a large quantity of whisky."

Mr. McClure described conditions in New York City in the period between 1890 and 1919, as determined by the detailed investigation and report of a Committee of Fourteen, composed of men of the highest standing in business, social and financial circles, as well as other reputable investigators working at the time. Under police protection arranged by those who controlled New York's ruling political machine, prostitution flourished in tenement houses and elsewhere; all the young "cadets" who controlled staffs of girls were affiliated with the local and dominant political organization. The amounts paid each month by a proprietor of a house on Twenty-seventh Street, which contained thirty women, were as follows: plain clothes men, \$205; patrolmen, \$184; inspectors, \$100; sergeants in plain clothes, \$40; sergeants in uniform, \$50. The inspector received \$250 as a first payment, called an initiation fee, and \$100 every month.

Inseparably connected with the operation of these disorderly houses was the sale of an immense amount of liquor.

Yet, with such conditions as these existing in New York City long before the advent of prohibition, the organizations opposed to prohibition and their allies, the newspapers, now have the effrontery to proclaim day after day, year after year, that it is the Eighteenth Amendment which has brought an "orgy of lawbreaking and corruption."

The fact is that it was the existence of such conditions as those described which brought about the demand throughout the nation for something more effective than local and state option, regulation of liquor through license restrictions, enactment of early-closing-hour ordinances, Sunday-closing laws and other palliative measures.

Bad as conditions undeniably are in New York City at present, no friend of prohibition enforcement, no one who believes that the prohibition law *can* be enforced, should hesitate to face them. Why? Because no real *effort* has yet been made actually to enforce prohibition in New York and some of the other larger cities of the country.

The liquor situation in New York City at this time is different only in degree from that prevailing in other places. It does present the picture of non-enforcement of law on a larger and clearer scale, and for that reason it may be helpful to give the picture of the New York situation.

The uniform estimate of the wet press of New York City, based apparently on information compiled by its Police Department, is that there are now thirty-two thousand speakeasies, night clubs and other resorts in the metropolis which are selling intoxicating liquor. New York State, under the administration of Governor Alfred Smith, repealed its own law in aid of prohibition enforcement.

However, it is admitted by the state public prosecutors and by the city's police officials that, under a recent decision of the highest court of New York, it is possible and proper for them to prosecute speakeasies and other disorderly resorts under the provisions of the state law against nuisances (Section 1530 of the State Penal Law). Mr. Maurice Campbell, Federal Prohibition Administrator for the New York District, specifically requested Police Commissioner Whalen, of New York City, to instruct his force to secure evidence for such prosecutions under the state law, in order that the entire responsibility and burden might not continue to be thrown upon the limited number of federal officers and courts in New York.

In his letter to the Police Commissioner, Mr. Campbell said:

"Nor can I agree with you in your statement that to enforce Section 1530 of the State penal law

you would require 5,000 additional policemen at an additional cost to the taxpayers of \$15,000,000. If there are, as you stated, 32,000 speakeasies in this city, it would not, by the widest stretch of your imagination, require that 31,999 be raided in order to eradicate this evil."

This was at the very time that the *New York Herald Tribune* was pointing out, with a considerable degree of satisfaction, that although six months had elapsed since passage by Congress of the Jones Amendment increasing penalties under the Volstead Act "there had not been a single trial under the law in the courts of the Southern District of New York."

Can there be any question that the non-use of the full power of the law largely contributed to the growth of lawlessness in New York City?

It can not truthfully be said that prohibition enforcement has failed in New York. It has not yet been attempted.

The Police Commissioner himself stated that the speakeasy is a breeding place for crime and immorality. So, said Mr. Campbell to Mr. Whalen: "If prohibition happens to be the gainer through your activity, and you do not want to assist in the enforcement of it, you can console yourself with the thought that you have in waging war against the speakeasy, taken the first necessary step in the

suppression of crime and murder by eliminating these breeding places."

The truth is that in New York, as in other cities, it is immensely profitable to the politicians to let speakeasies flourish. One reward is that the political machines which are liberal in their attitude toward the bootleggers never lack for poll workers on election day.

It is, of course, a fact known to every police official that no policeman can constantly patrol his beat without becoming aware within a very short time of the existence and location in his district of blind pigs and other disorderly places. If, then, there are thirty-two thousand speakeasies and similar resorts in New York, as estimated by police officials, what is the natural assumption? Simply that the places are being "protected" by some one—and for a consideration.

Will any reader, wet or dry, deny that each one of the thirty-two thousand places selling liquor would be willing to pay five dollars a day to be protected against police molestation? Probably ten dollars a day for protection would not be considered excessive by most of the bootlegging establishments. But using five dollars, it is clear that if the police of New York City, and some of the politicians who control their appointments, are not collecting at

least one hundred and sixty thousand dollars a day or sixty million dollars a year from the speakeasies alone, they are either very honest or very stupid. Take your choice!

The situation in the cities is leading to a crisis in the American experiment of a democratic form of government. With a far greater proportion of the total population living in the cities than ever before, it becomes increasingly apparent that the crucial problem of to-day is that of securing decent, honest, effective government in the cities if government of the people, by the people and for the people is to endure.

Twenty or thirty years ago the saloons were the assembling places and allies of crooked politicians who manipulated elections in the interests of the grabbers of franchises for street railways, electric-light plants, gas plants and other seekers of special privilege.

It is the political machines that were built up in the old saloon days, and that were firmly entrenched in power by use of money contributed by the liquor interests, that are still functioning. Now they are protecting the legally unlicensed but nevertheless practically enfranchised illicit liquor interests—and getting in return the support of all the riffraff necessary to the operation of a political

machine: the crooked poll watchers, the election sluggers, the "repeaters," and all the other ugly elements of dishonest city government.

The so-called decent citizens have done little anywhere permanently to curb the reign of the corrupt, conscienceless manipulators of city affairs. True, there have been spasmodic uprisings in various places from time to time when the outrages upon civic honesty and public decency became too apparent and too numerous. But the great tide that swept certain cities and cleared their public offices of criminals and crooks subsided as rapidly as it rose. The mass of people has not anywhere been *permanently* organized in the interests of decent city government. Municipal reform has lacked a sustaining force; and the grafters and corrupt politicians have soon worked their devious way back into control of political machinery.

Our universities and other educational institutions can not escape a share of the responsibility for this condition of American democracy. It is all well enough to have abstruse text-books and lecture courses on the science of municipal government. But what is urgently needed is highly *practical* training for civic leadership, and for *mass education* of the people in the science of governing themselves. Education must accept the responsibility for de-

veloping a civic consciousness and a sense of relationship between the citizen and his local government. This feeling flowers in rural sections, but it gets pressed out in congested centers. On finding a way to preserve democracy in city government depends the survival of American ideals.

There are certain definite, practical ways to organize public sentiment and to make it effective at the polls. Those ways are well known to the dishonest political bosses of the cities. They are almost an utter mystery to the so-called reform elements that constantly inveigh against municipal misrule.

It may be set down as a fact that the untrained amateurs in politics, no matter how well intentioned, and how diligently they may work, practically always are *certain* to lose in a contest with a well-oiled political machine. The people with good intentions just don't know the "how" of influencing public sentiment—and, what's more important, of getting a full vote of the best element and preventing a dishonest vote and count by the corrupt elements.

I have in mind, for instance, a city where the political machine was in open alliance with the liquor and other criminal interests. It was proved beyond question of a doubt that a concern which

had received a contract from the city had given a check for several thousand dollars to the political boss of the controlling party. Yet the "reform" interests lost in the election, despite strong newspaper support. Why? Because the machine leaders had the acumen not to take issue on the graft question. Instead they diverted the minds and emotions of the people away from the contribution check to "police brutality." The forces which were struggling for honest municipal government had control, through a state organization, of the police department; a policeman had shot an innocent man; and that fact was shouted into the ears of the people by machine orators until election day. They made every voter forget corruption in a worked-up sympathy over this one policeman's mistake. The reformers didn't know how to meet the issue, evade it, or make their own attack effective. They didn't know how to insure an honest count in all the hundreds of precincts. They didn't know how to enroll the services of hundreds of young men who possessed enough peace patriotism to take a chance on being slugged or otherwise assaulted while standing guard at the polls to insure a fair ballot. And the old political machine won the election!

Just to talk against the breakdown of municipal

government in America is futile and foolish. Those who believe in honesty and in the majesty of the law must meet the crooked politician on the battle-ground. It has been done in numerous cities, and when properly led and properly organized the decent element of citizenship has won every time—simply because it is by far the *largest* element. And in that basic fact lie the seeds of hope.

Those who really want prohibition enforcement to succeed in the large cities of the nation will have to get down to the brass tacks of combatting ward politics; and, after winning victories, they will have to keep organizations alive, alert and effective. The battle against civic dishonesty is a never-ending one. The moment vigilance is relaxed, all the slimy creatures who live in the muck of crime, vice, graft and corruption creep from their hiding-places and invade the halls of justice and government.

This much is certain: Until the better elements in civic life learn how to cope with boss-ridden wards and city halls they will not have honest enforcement or administration of prohibition or any other laws for the public weal.

If the search-light of prohibition enforcement has revealed the city as our national shame then it will have served more widely than framers of the Eighteen Amendment dreamed.

CHAPTER XIV

WHEN STATES “SECEDE”

A FORMER prohibition administrator of New York City and an able man, Mr. R. Q. Merrick, said in his Durant contest essay that he could put an end to the liquor traffic in his district if he had five times his then existing force of eighty men. His district embraced two hundred and forty-six counties in three states, and Mr. Merrick said that his force of eighty men could only “scratch the surface.” But Mr. Merrick is wrong in thinking that four hundred men or even four thousand men sent to his district from Washington could stop the liquor traffic, if cooperation were withheld or obstructive tactics used by state officers and state courts.

The people of America—I agree with the anti-prohibitionists on this—do not want and will not permit an army of officers of the Federal Government to enforce law and order in local communities. Nothing is more contrary or repugnant to the basic principle of our form of government. Monarchs

enforce their king's will by the use of armies under centralized, autocratic control. But democracies do not work that way. Local self-government and law enforcement are the basis of our republic.

The function of the Federal Government in enforcing prohibition is to supplement the work of the state. But where the state authorities are inactive, or worse still, obstructive, the work of the Federal Government is nullified. For instance, a few years ago the attention of the Department of Justice was sought by interested citizens because information had come to them that the New Jersey state police had seized fifty-five men and a half-million dollars' worth of liquor in that state, the men, released by city magistrates on inconsequential bonds of five hundred dollars or less, subsequently disappearing from sight. The Federal Government simply can not be the policeman for forty-eight states, and prohibition never can be enforced that way.

No "super-bureau" at Washington can be more than a makeshift if it causes the field offices, and the states and local communities, to dodge responsibility. It is local opinion and vigilance that will bring about effectiveness in prohibition enforcement, and every other kind of law enforcement, throughout the country.

In New York State, where the legislature during the administration of Governor Smith repealed the state liquor enforcement laws, leaving the job solely to the Federal Government, there are between two and three thousand state police, and there are more than seventeen thousand city police in the city of New York alone; there are one hundred and thirteen Supreme Court state judges and sixty-two county prosecutors. All of these agencies might be enlisted to reduce the crime and lawlessness that flow from disregard of the prohibition law, but they are now, and have been, inactive as to prohibition since New York State repealed its own enforcement act. Certainly a few hundred federal agents and nineteen federal judges, with four United States attorneys, can not hope to enforce the prohibition law with any great degree of success, in a state containing about one-tenth of the nation's population, with practically no help from the sheriffs, the policemen, the state prosecuting officers or the state courts.

The metropolitan newspapers, therefore, are entirely truthful in telling their readers of the "wringing wetness" of New York and other states which have dodged enforcement responsibility, such as Maryland, Wisconsin and New Jersey. But they are all wrong in editorially using the

facts about non-enforcement to prove that "prohibition is unenforceable." There is bootlegging on a vast scale in New York City. Liquor running over the Canadian border has multiplied; places that formerly operated secretly and with a certain degree of caution now operate openly with bars and brass rails; hundreds of night clubs in Manhattan are just a new form of the old-fashioned saloons that Tammany always protected—and used for pay-off stations on election day in times gone by. The night clubs have open bars and yet they can exist only as long as they can keep their licenses from a "liberal" city administration. Of course the law is not being enforced in New York; it is being ignored, evaded and nullified.

But the responsibility is not solely that of the President of the United States nor of the Attorney General. It is the responsibility of the people of New York. They get just the same kind of prohibition enforcement that they get of *state* law enforcement. No one blames the Federal Government for the lack of enforcement in New York of the penalties against murder. Yet honest citizens as well as notorious gamblers, not subject to federal jurisdiction, are shot down from time to time, and the murderers go unpunished. The number of murders exceeds those of all of England.

There is graft in the sale of intoxicating liquor, prohibited by federal law. But there is likewise graft in the letting of contracts for sewers and public improvements, authorized under state laws.

The celebrated night-club hostess who joked with the judge and the jury and tried to give her trial the atmosphere of a vaudeville show was not any more contemptuous of the authority of the United States Government than she was of the people of New York State and New York City.

Because the New York newspapers have been giving so much publicity to the "wetness" of the city and state, the situation there has come to be regarded by many honest law-abiding people as proof of the unenforceability of the prohibition law.

In the previous chapter I have shown what the situation in New York was long before any one even seriously thought that there might sometime be a national law against the sale of intoxicating liquor. Let us call, however, one more witness—a man whose truthfulness and credibility were never questioned. In other words, let us see what Theodore Roosevelt said about the New York liquor situation in 1895, more than a third of a century ago and twenty-three years before the adoption of the Eighteenth Amendment. This was his statement:

"All of our cities have been shamefully misgoverned in times past, and in New York the misgovernment has been perhaps more flagrant than anywhere else. The most wealthy saloon keepers have possessed so much influence with the city officials that the police have not dared to interfere with them. The politician has been continuously more corrupt and the saloon keeper more defiant of law. Thousands of arrests were made every year, but the worst offender, the big man with the pull, was never arrested while the man of small means was prosecuted without mercy. The city authorities, notably the Police Magistrates, the Police Department, and the District Attorney's office were in league together and the saloon keeper alternately profited and suffered by their willingness that he should violate the law."

It must be apparent from this that national prohibition certainly is not more unenforceable than *state* laws. Furthermore, those who oppose the federal law are of diverse opinions as to a state substitute. Whatever plan might be set up in lieu of the National Prohibition Act would be as vigorously opposed and as frequently violated as the federal law has been. The effectiveness of any government—city, county, state or federal—depends on the alertness of the individual citizen. He can not be effective in the performance of his civic duty unless he has correct information. And in the larger cities of the country, there has been a vast quantity of misinformation current. Hundreds

of facts are selected and circulated which bear out the impossibility of enforcement; dozens of interviews are printed in the newspapers which reflect only wet views. This is not merely my own opinion; it is that of thousands of newspaper readers.

Says a New York newspaper, *The World*:

"It is not a mere question of law-breaking. It is a question of whether the drys who control the Federal machinery have the power to impose their will upon a very large mass of people who are deeply resolved that they will not let themselves be imposed upon."

That is nullification. Those who favor nullification of the prohibition law are in effect denying the validity of the whole basis on which our system of government rests: the right of majority rule.

When is it ever possible to secure anything like unanimity of public sentiment in favor of any law or policy of government? Is there not a substantial minority opposed to the protective tariff system; to government regulation of public utilities and railroad rates; to the Federal Reserve Banking System; to existing divorce laws? Practically the whole population of a county may work itself into a perfect frenzy of political strife over the location of a highway; but when the ballots are counted,

and Route No. 1 has received a majority of fifty votes, or even less, out of a total vote of seven or eight thousand, the minority submits and the law takes its course!

How infrequent it is for even seventy per cent. of the total vote to be in favor of a candidate or a referendum proposition. More frequently, issues are decided by a bare majority. Against fifty-five per cent. of the voters in favor of a gasoline tax may be forty-five per cent. opposed to it; yet the forty-five per cent. pay the tax without being "deeply resolved that they will not let themselves be imposed upon," as *The New York World* expresses the attitude of nullification and disobedience to the will of the majority in the case of prohibition.

No important change in governmental policy ever has been accomplished by waiting for uniformity or unanimity of public opinion. There is *always* a militant minority on any important public question. But being militant doesn't make them right.

Balanced against the New York policy of nullification are these words of Andrew Jackson, President of the United States—a State rights man and a Democrat, uttered in 1832:

"No amendment can be made in the Constitution except in the mode pointed out in the

Constitution itself. Every mode else is revolution or rebellion. Therefore, when a faction in a State attempts to nullify a constitutional law of Congress, the balance of the people composing this Union have a perfect right to coerce them to obedience. The laws of the United States must be executed."

I commend those words to the study of the editors of *The New York World*, which has always been Jacksonian in its democracy! And I remind them that the legislature of the state of New York ratified the Eighteenth Amendment to the Constitution of the United States on January 29, 1919. I also remind them that however wet New York City may be, there are millions of people in the metropolis, as well as in the other cities and rural sections of the great Empire State, who believe not only in law enforcement generally but in the enforcement of the Eighteenth Amendment and its supplementary act, specifically.

In a brief presented by Wayne Wheeler to Governor Smith, when the latter was considering the advisability of signing New York's repeal of its own prohibition enforcement act, were set forth clearly and convincingly the legal reasons and precedents against nullification. The brief argued the legal obligation of the states to help enforce the Eighteenth Amendment, under the clause provid-

ing concurrent authority on the part of the State and Federal Governments.

Said Mr. Wheeler, after citing numerous decisions of the United States Supreme Court as well as the state courts establishing the obligation of state cooperation:

"For the State of New York to attempt to repudiate, by legislation, an obligation supposedly assumed in good faith would savor of perfidy to her sister States. But there is something more fundamental in this issue than the mere question of good faith in relation to her sister States—it is the vital question of whether Constitutional obligations, legally assumed, may be thus ruthlessly disregarded without imperiling the whole constitutional system."

In other words, has not the dry state of Kansas, which in good faith enforces the Constitution of the United States concurrently with the Federal Government, the legal right to expect the state of New York, or Wisconsin, or Maryland, or any other state dodging responsibility and expense, to bear a proportionate share of the responsibility for enforcement of laws applying to the whole nation and growing out of a constitutional policy? It may well be pondered whether a state exercising concurrent jurisdiction as it is legally and morally obligated to do, could not bring action in the Supreme

Court of the United States to prevent repeal of a concurrent enforcement statute of another state. As a lawyer, I should like to see this question tested.

Article XIII of Section 1 of New York's own constitution, provides that:

"Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the constitution of the state of New York, . . .'"

Is it support of the Constitution of the United States to repeal the laws in aid of enforcement of the Eighteenth Amendment?

These words, uttered by Governor Cox, of Massachusetts, in vetoing a bill intended to weaken prohibition enforcement in that state, are pertinent:

"Whether a person approves of the Eighteenth Amendment or not, whether he thinks the Volstead Act wise or absurd, he ought to stand squarely for the enforcement of the supreme law of the land."

And likewise, these are moving words of Jefferson Davis, advocate of secession, in his farewell address to the United States Senate:

"I hope that none who hear me will confound this expression of mine with the advocacy of the right of a State to remain in the Union, and to disregard its constitutional obligations by the nullification of the law. Such is not my theory. Nullification and secession, so often confounded, are indeed antagonistic principles."

The Eighteenth Amendment is doing one thing which is of sobering importance. It is putting democracy on trial. It is testing whether this government, with its underlying theory that a majority of states shall determine its policies, can withstand the militant discontent of organized minorities in many of those states. Therefore, as I see it, the struggle is not whether prohibition will survive, but whether the United States is equal to the task.

Either a majority of the people of this nation and more than three-fourths of the states have the right and actual power to deal with the liquor evil by prohibition of the sale of intoxicants, or they have not. The whole apparently complicated question can be resolved into the very simple one of whether a government primarily based upon rule of the majority is an effective and sound government. The basis of our form of government has been challenged, and the mass of citizens are at last beginning to see that the issue is not whether there shall be light wines and beers, a more

"liberal" medicinal whisky permit system, or government sale of liquors—but whether our form of government is incorrect in principle and a failure in practical operation.

Now let's turn to the other side of the picture and see what can be done when the state and local communities do what the Eighteenth Amendment of the United States Constitution contemplates: exercise their concurrent authority to enforce.

In the state of Kansas, which had an effective law of its own for prohibition enforcement long before the Eighteenth Amendment was adopted, the Federal Government has had comparatively little to do since enactment of the Volstead law. In one year, for instance, we had to handle only twelve liquor cases in the federal courts of Kansas. But they were important cases, and the government won all twelve of them. The cases instituted in Kansas range from few or none some years to nineteen, which is the highest number, in 1928. Contrast this with the situation in New York State, where the Federal Government has been obliged to prosecute from six hundred to one thousand cases a month, and then has only scratched the surface. It is not the difference in the size of the two states that counts; it is the difference in the attitude of the local enforcement authorities, and an undoubted

influence of the press. The situation, in this aspect, is the same in Philadelphia, Chicago and New York as in hundreds of small towns and cities.

For instance, at Trenton, Florida, we secured the conviction of the Mayor, one of the members of the city council and an ex-constable and deputy sheriff. They were indicted with others for violations of the prohibition act, and upon conviction were sentenced to terms of fifteen months and a year and a day in the federal penitentiary.

In some of the smaller towns in the country, we found evidence of virtual "licensing" of bootleg establishments by local authorities. The practise at Silverton, Colorado, in the mining district, for instance, was regularly to fine those who operated what amounted to open saloons, the fines being used for municipal purposes! As long as these fines were paid regularly, the bootlegging establishments were allowed to continue operations without any real interference by the local municipal authorities.

On the other hand, where the state or city uses its power to curb liquor violations, the results are usually worth while. In Pennsylvania, for instance, the State Alcohol Permit Board has worked in close cooperation with the federal authorities. Violations by permittees have been reported to each

other. Violators have been prosecuted under state and federal laws. All records, reports, witnesses and assistance have been provided by each to the other in bringing actions to a successful and prompt termination.

The result was a reduction of almost one-third in the number of permits issued in two years for the handling of alcohol and liquors.

On reports of federal prohibition agents, a manufacturing company located at Reading, Pennsylvania, was deprived by the State Board of its permit to operate a brewery or cereal-beverage plant, and its ten-thousand-dollar bond forfeited. Injunction proceedings also were brought and the brewery premises padlocked. This was only one of several like cases where the state authorities took action on evidence furnished by federal prohibition agents.

When the Federal Prohibition Administrator for the Fifth District, located in Philadelphia, appealed to the Attorney General of Pennsylvania for aid in the enforcement of prohibition laws, a special State Deputy Attorney General was assigned to conduct padlock proceedings. On one day sixty-five cases were instituted by the State Attorney General, and fifty-two places involved in these cases were ordered padlocked. Six other

places were restrained and the character of business changed.

How different this is from the situation in New York State! One of the United States district attorneys in New York called attention to the fact that the two federal judges in the Western District of New York had sole power to try prohibition cases in a territory populated by approximately two million people. Necessarily, therefore, the pressure of work was bound to influence officials to induce bootleggers, little and big alike, to enter pleas of guilty on promise of short sentences and light fines rather than to congest the court dockets with untried jury cases. Is it prohibition that is a failure in New York State, or is it government by the people of New York State that is failing?

From time to time—many times—I urged that United States attorneys, marshals, and other so-called “key men” in charge of investigative agencies be called to Washington for zone conferences at which a definite policy of approach to state and local officials could be worked out. After that, each of the federal men should go back to his respective district and take the initiative in approaching governors, state attorneys general, mayors, chiefs of police, in an effort to work out a scheme of coordination and exchange of information where

authorities overlap. Such a plan will enable the Federal Government to turn back to the states the responsibilities for prosecution of many minor offenses that now congest federal dockets. On the other hand, the state could and should call upon and receive help from the Federal Government in dealing with criminals whose operations are of extended or politically entrenched nature.

Such cooperation can be secured even in states which are considered wet. For instance, Maryland has no state prohibition law though it ratified the Eighteenth Amendment. But Maryland does have a high caliber of county government, and practically all of the counties of Maryland, outside the one in which the city of Baltimore is located, have local option statutes. When the prohibition administrators and United States attorneys have called upon these county officials and worked out a means of sharing responsibilities, the counties have taken over a substantial share of the load. This is also true of many counties in Florida where, during the long period of time when there was almost a complete breakdown in federal enforcement, prohibition agents took their cases directly to county sheriffs, and the offenders were tried in the county courts.

The arm of the Federal Government is long and

strong, but it needs to be reenforced and aided by the numerous arms of the state and municipal governments. With all those arms of the law reaching for the lawless, the bootlegger's chance of escape would be slight indeed. It would be possible by systematic appeal and carefully worked out coordination of activities to obtain local and state action that would yield rich returns in reduction of lawlessness.

CHAPTER XV

HUMAN FLAWS IN ENFORCEMENT

FACING the *facts*, even if they are ugly, in any situation is the first step toward solution. Because the facts have been evaded, dodged or twisted so much by both those favoring and those opposing prohibition, the problem constantly has grown more intricate and more confusing.

Not until most of the country has been brought face to face with the realities of the situation will any real progress be made in remedying conditions. The dominant reality is that the whole problem is one of getting the right men in places of power in enforcement,—men of creative thought, of courage, those not slaves to political ambition. And by men I mean also women—lots of them. Enforcement would be more wholesome to-day if more women had been used as drug inspectors and to handle permits. Women of superior education can be secured for such semi-clerical places—because women of education have fewer openings than men with the same years of training.

Many of those who are strongly in favor of prohibition have labored under the mistaken belief that all that is needed to bring about effectiveness is a substantial increase in the number of agents, prosecutors, judges and other enforcement officers.

But I do not think that states the case. Federal enforcement does not need more men, more money and more ammunition. In fact, I believe that with the exception of a few adjustments of present statutes, it can safely be said that prohibition enforcement is not greatly in need of more law. All difficulties and just criticisms come back to the human flaws in enforcement. It is lack of intelligence, earnestness and honesty, rather than lack of law, that prevents satisfactory results.

Here is part of a recent personal letter from a United States District Attorney in the East (with the names and places deleted, for obvious reasons) which sheds light on the question of whether more or better men are needed:

"A few minutes ago Mr. S——, former Congressman and State Senator, who lives just outside the city of K——, was in my office and told me about a saloon keeper in K—— who was in the Senator's office Saturday of last week and his conversation divulged that he was paying about \$1,000 a year to a brother of the Mayor of K—— for protection in his business. He also told the Senator there were between fifty-five and sixty other men

who were running saloons and paying as much or more than he was paying for protection.

"Of course, you have no opportunity of knowing the kind of men working under Mr. X——, the Prohibition Administrator, and I am not complaining about them. Nevertheless, it is a fact that neither Mr. X—— nor any of the present employees of that office have had sufficient experience and training to intelligently investigate and prepare a big conspiracy case for trial in a Federal court. Mr. X—— and his men have been doing wonderful work along the line of repression insofar as it affects the smaller violators, but they have not been able to fathom the larger phases of violation of the Prohibition Act, and have not been able to prepare cases which involve the real leaders in these violations.

"The Mayor is serving his second term here, and the report among those who are conversant with such matters is that he is the head of the protecting organization for the violators. My personal opinion is that this lead from the Senator is an exceedingly important one and calls for a careful investigation by the best trained men in the Bureau of Investigation."

The reply to this had to be that the Bureau of Investigation in the Department of Justice did not have the money to make the investigation. Congress had appropriated none to them for prohibition evidence-gathering. Such an investigation was one that should be made by the agents of the Prohibition Division of the Treasury Department. And they, for that district, are characterized above.

It is the lack of *quality*, training and morale of the man-power in the enforcement job rather than the lack of quantity which has made the work ineffective. Too many of the agents are the ordinary policeman type, without special fitness for intricate, under-cover, investigative work. They bring in too many little cases against ordinary, retail, local bootleggers, and not enough cases against the real brains of the bootlegging industry. And their superior officers too often let an agent's effectiveness be rated by the number of cases he reports, rather than by the importance of the evidence he uncovers.

To detect and capture ten bootleggers in one week in a town of any size presents no great difficulty. But to discover and obtain proof sufficient for conviction of the common source of supply in that community, to find who is furnishing protection and why, to link these local operations with a gang distributing liquor over not only an entire state but three or four states, and to show their dependence primarily upon the alcohol leaking from some brewery, distillery, bonded warehouse, alcohol manufacturer or drug permit holder, is exceedingly difficult. But it is much more essential. If counterfeit money is discovered in circulation, the Secret Service are not satisfied just to arrest the one who passes it. They work months carefully

under cover to apprehend all conspirators engaged in its manufacture and distribution. The same spirit, organization, morale and plan of approach must be developed in the prohibition force. But that is wrestling with the human equation, always a hard and discouraging job—but never an impossible one.

A question often asked is: "How many agents, spies and snoopers do you think ought to be employed to enforce prohibition?"—the implication being that a limitless army is needed to secure anything like effective enforcement.

The answer is that the number of federal prohibition agents and officers should not be greatly increased. It is no more logical, sensible or feasible to expect the Federal Government to set up and maintain an organization sufficient to apprehend all the liquor law violators in the country than to set up an organization to apprehend and prosecute all the automobile thieves in the United States.

Where blame does attach to the Federal Government is in failing to supply the right kind of man-power in many places to perform the share of work that constitutes its rightful burden—eliminating sources of supply and uncovering the graft which perpetuates this supply. The human flaws, and not the legal flaws, have furnished most of the

loopholes through which bootleggers have swarmed. All those flaws have not been in the personnel of the Prohibition Unit of the Treasury Department by any means. There have been and are substantial defects in the Department of Justice's machinery for law enforcement.

As things are now, the prohibition agents and their superiors often say: "We gather plenty of evidence and arrest practically everybody who is in the bootlegging business, but we can't make any real progress in putting a stop to the business because the Department of Justice falls down on its end of the job. Give us the right kind of district attorneys who will prosecute cases vigorously and secure convictions and long sentences, and we will soon have most of the bootleggers out of business." And in some districts the comment is justified.

During my entire eight years as Assistant Attorney General, a large part of my time and energy was in effect necessarily devoted to prosecuting prosecutors when I should have had it all to direct prosecution of people the prosecutors should have prosecuted!

For instance, a few years ago many reputable citizens of an eastern city complained that prohibition cases assigned to an Assistant United States District Attorney were being handled in an inef-

fective way. The complaints were of such a character that we ordered a thorough investigation. The investigation disclosed that an Assistant District Attorney, who had been appointed through the political influence of a United States Senator, was constantly consorting with bootleggers and other underworld characters, and had shown evidences of wealth not at all compatible with his salary of less than four thousand dollars a year. Among these evidences were purchases of a high-priced automobile and an expensive seashore home, payments being made in cash.

The prosecutor, on being questioned, admitted that he had possessed little money or property before taking office. He explained his evident prosperity after assuming office as due to the receipt of a large fee from an underworld character for whom he had done some work which he said was in no way connected with his federal activities. He stated that the fee had been paid in cash and that the man from whom he received it had since died, having been killed in a shooting affray. The prosecutor admitted that he had failed to account for the money in his income-tax returns. He stated that he was unaware of the regulation of the Department of Justice prohibiting district attorneys or their assistants from appearing as defense counsel

in criminal cases, either in state or federal courts. Certainly a man can not both prosecute and defend persons at the same time without either neglecting the public's interests or poorly serving his private clients' interests.

Even after we called for the resignation of this prosecutor, he sought by political influence to retain his position. Of course he finally went. But it *is* disheartening to spend months in getting rid of an unfit attorney while law enforcement goes below the zero mark in his district!

In another district, two Assistant United States Attorneys, while responsible for the prosecution of prohibition cases, became associated apparently as partners with several shady characters in the actual purchase of a wildcat brewery! Wrestling constantly with the inertia and politics involved, it took four months before one of these could be eliminated, and the other one held on for fifteen months before that district was rid of his official services!

Clear and convincing evidence of the illegal operations of a liquor ring engaged in transacting an enormous business came to me one November. After conference with Treasury officials and the Attorney General it was the consensus of opinion that the case could hardly be prosecuted until

the then United States Attorney was eliminated; his connection with some of the conspirators was too close and too irregular. That meant that valuable documents and books, vital to proving the case, which should have been subpoenaed by the grand jury and impounded for use in the trial were left in the conspirators' custody. Of course before the United States Attorney "resigned" three months later the conspirators had done considerable covering up of evidence, and two of them had gone abroad.

There are many ways in which an unwilling, indifferent or dishonest district attorney can nullify results. One, who was not corrupt, was nevertheless so evasive about prohibition cases that in spite of many departmental letters, he neglected to push the simple hearing necessary to remove a defendant to another district where he had been indicted, there to stand trial. This defendant was a federal court bailiff who happened also to be the Republican county chairman. After neglect for nearly two years, the Department of Justice specially assigned one of its "Flying Squadron" attorneys to end such delay. After finally securing his removal for trial, the defendant was convicted and sentenced.

The district attorneys' offices are responsible for insuring the adequacy of bonds posted by boot-

leggers to secure release on bail pending trial. Where prosecutors fail to see to it that the bonds posted are valid and collectable, the result is that arrested bootleggers disappear, bondsmen pay nothing, and the law is thwarted.

In one district out of 830 criminal cases, 474 were either dropped for want of prosecution or quashed on motion of the defendants—which meant that the defendants were freed without trial. In the same district, there were 123 trials by jury, and 65 of those, or more than half, resulted in acquittals for the defendants. That could not mean blame anywhere except in the District Attorney's office. For if he was getting poorly prepared evidence he should turn it back and not file so many cases thoughtlessly. An investigation of facts revealed that the Attorney in charge simply wasn't interested in prohibition enforcement. He was replaced by a man who would work, and then convictions resulted.

The President and the Attorney General can battle valiantly to correct such conditions. But of equal importance in securing results is local vigilance. In every community, no matter how small, are civic organizations which can and should keep a check on the effectiveness of the law-enforcement agencies and the character of their personnel. The mere fact that officers—local, state and federal—

who have been sworn to uphold the law know that their acts are under scrutiny will aid to a surprising extent in keeping their standards high.

And when suggestions or protests fail to bring about correction of undesirable practises that lead to failures in enforcement, an aroused community can secure results either at Washington or at the ballot box. Even those who are not prohibitionists want clean honest public officials. The decent citizenry in any state will become aroused over graft. That is the common denominator of civic interest. It is all that will correct the human flaws in enforcement.

“Eternal vigilance is the price of liberty”—and law enforcement too.

CHAPTER XVI

HUMAN NATURE AT ITS WORST

NEAR the middle of the line of enforcement is the United States commissioner. His duty is similar to that of a justice of the peace or magistrate in cases under state law. It is the duty of commissioners to issue search-warrants, upon submission to them of proper evidence. After arrest, a bootlegger is taken before a United States commissioner for a preliminary hearing. The commissioner hears the government's evidence or enough of it to convince him that there is sufficient cause to warrant holding the prisoner for the action of the Federal Grand Jury.

The commissioner, then, is the first officer in the line of effective law enforcement. He can help or he can hinder the administration of justice. His compensation is on a fee basis, and under the law, he can receive a fee in only one case per day. In other words, if he hears ten cases in one day, he receives a fee in only one of those cases. The result is that some United States commissioners have

been in no hurry to hear all the cases that were ready for prosecution. They have, in some instances, refused to hold more than one hearing a day, even though there were a dozen or more cases ready to be heard and that could have been heard, with prohibition agents waiting to tell their stories, and meanwhile leaving their districts unguarded. The agents would have to come back day after day, before they could present their cases, simply to enable the commissioner to earn more fees!

Another type of commissioner has, by granting continuance after continuance, sometimes as many as a dozen in a single case, greatly reduced the effectiveness of the prohibition force. Still other commissioners have refused to hold bootleggers for the action of the grand jury, even in cases of direct testimony by the agent of a violation of the law, on the excuse that they, the commissioners, did not believe the officers, thus practically trying the prohibition agent for perjury instead of letting the evidence against the prisoner be presented to the grand jury so that its members might determine whether or not an offense against the government had been committed.

An incident from a notoriously wet city will give an idea of the weakness commissioners can

cause in the judicial machinery. About a year ago, under-cover agents, acting under instructions from a Prohibition Administrator, were investigating certain night clubs and other suspected establishments. They were sitting in one of the places. A waiter came up to them and whispered to one of the agents, "You'd better be careful with that bottle of wine, because one of the men at the next table is a commissioner."

The agents promptly removed the bottle, whereupon the waiter smiled and said he was only joking, as the Commissioner was O. K. and was in the place often. The agents then observed that the Commissioner and the man with him ordered and consumed a great deal of whisky. The agents asked him if the man referred to was a city commissioner and the reply was, "No, he is a government commissioner; that's Mr. X."

A little later, the agents made application to Commissioner X for a search-warrant with the purpose of raiding a place that had been raided thirteen times previously and yet never padlocked. The Commissioner issued the search-warrant, but when the raid was made, the place was found closed and some of its fixtures had been removed. There was every evidence of a tip-off of the raid. A week later the place again was in full operation, with

liquor being sold almost openly. Five more raids on the same place were made in the next month and a half, and then the place was closed. But when agents were sent there once more to ascertain whether it had reopened, they were handed a card directing them to another address. Accordingly, they raided the new place and arrested the two men in charge.

The police blotter shows that these two men were released at three o'clock in the morning on a bond approved by Commissioner X. One of the men so released stated to a prohibition agent that Commissioner X had personally appeared in police headquarters to approve his bail bond. If Commissioner X had a telephone it was not listed in the telephone directory. Apparently, however, the bootleggers had no difficulty in locating him at three o'clock in the morning.

Here is a part of a report from an able United States Attorney who had been trying cases in one of the southern districts of the country:

"There is another bad situation here. The Commissioner advises a little clique of attorneys when search-warrants in liquor cases are issued, and they in turn warn the offender, so that the raiders find only soft drinks and church music. It is common talk that the Commissioner gets \$50 to \$75 per month from *each* speakeasy and the disturb-

ing thing about it is that the Federal Judge, the United States Attorney and his Assistants all are very friendly with the Commissioner and others with him. With about six investigators for a few weeks and a Grand Jury I am sure the facts could be brought to light and this situation cleaned up."

The commissioner is appointed by the judges. There is no check on his activities, or any way for the President or Attorney General to remove him. Judges do not take seriously enough their responsibility in appointing commissioners. There are judges whose own records are clean and fine, but who nevertheless allow commissioners to serve in their districts who are undoubtedly in league with lawbreakers.

Of course, the character of the juries selected to try prohibition cases is important.

About five years ago I looked into the situation at Pittsburgh, where results had been unsatisfactory, and found that for years the practise had been for the clerk of the United States Court to accept lists of names handed to him by various attorneys. This, of course, resulted in great activity on the part of attorneys who handled criminal cases in United States Court to supply the clerk of the court with lists of names of "candidates" for jury service. The situation was called to the attention of the presiding jurist, then Judge Thompson. The

result was a correction of the situation, with the co-operation of all members of the court.

Often lack of sincerity or fighting courage on the part of the district attorney is responsible for the failure of juries to convict. Juries in many of the larger cities, especially in the East, have been very bad. I use that last word advisedly. They have been bad in the sense that some members of them have been "approachable." There is in most large cities a considerable class of what may be termed "professional jurors"—political hangers-on who, lacking other steady occupation, accept jury service as a matter of bread and butter and not as the fulfillment of a civic duty. The same names are on the jury rolls term after term. Decent citizens are partly responsible because they get excused and leave the field to the "professional juror."

The district attorneys can not expect to secure convictions unless they take steps to insure the drawing of juries composed of property owners, permanent residents and people of at least average intelligence and integrity. With the cooperation of the judges and jury commissioners, substantial improvement can be effected in the caliber of juries even in the largest so-called wet cities. But it is a hard task to which the district attorney has to give much patience and hard work. Juries need not be

made up alone of men from the boss-ridden wards of a city. There are suburban sections that will furnish a high type of citizen to serve.

Wherever the proper effort has been made on the part of prosecuting officers to improve the jury situation, there have been gratifying results in liquor as well as other criminal cases. No federal official can validly excuse his own shortcomings in enforcing prohibition by saying: "Well, juries won't convict, especially since the heavy penalties of the Jones law went into effect."

A duty rests upon all who advocate effective law enforcement to investigate minutely the jury situation wherever convictions are not being obtained and find out if the jury list is fairly representative of the better citizens. If not, make it so. The presiding judge in the district can bring about improvement, because the jury commissioners serve under him.

Almost all of the United States judges are men of high character, determined to preside fairly and justly in the cases that are tried before them, even though their own opinion may be that prohibition is wrong in principle. A few judges, however, have been guilty of conduct that obstructed the proper administration of justice. I have in mind judges who adopted a consistently unfriendly atti-

tude in commenting to the jury on the weight to be given the evidence of prohibition agents; judges who have received gifts of liquor and who even keep and consume liquor in their court chambers; and judges who have gone as far as publicly to denounce the prohibition law and all those who were attempting to enforce it.

Recently a Judge who has just assumed a high advisory position to help diagnose what is wrong with law enforcement was hearing a prohibition case in a southern state. A colored witness was on the stand. This old darkey referred to the agent's approach with, "Well, you know I seen the law a-comin'." "You saw what?" the court inquired. "The law, the law, that man there"—pointing to the prohibition agent who had made the arrest. Then the Judge, rapping for order, turned to the old colored man and before a crowded courtroom said, "I want to instruct the witness that a prohibition agent is not the law and most of them whom I have seen are about as far away from it as could be imagined." It is to be hoped that in the wider view that Judge's present studies may give him he will come to see that one of the causes of entrenched disregard for law is the psychology of revolt implanted by just such thoughtless phrase-making ridicule as his from the bench.

More frequently, a judge's own opposition to the prohibition law will be reflected in the lightness of the penalties inflicted where bootleggers have either pleaded guilty or been convicted by a jury. Small fines simply serve as a license-fee system to the professional bootlegger; he considers them a part of the overhead and arranges his prices accordingly. Consider the situation revealed in this letter from a state prohibition-law-enforcement official:

"I am certainly pleased to know we have one person in the U. S. A. who will stand up and tell the world why prohibition is not effective. Fines are very small in Akron, Toledo and various other cities in this State. One hundred and three hundred dollars are about the limit, no matter how grave the offenses. We wonder when we see such small fines and so many delays if some of the bootleggers have not paid their way out easy. I had a case here to-day, that of James L_____, before Judge B. He fined the defendant \$250 for possessing three gallons of whisky.

"The defendant said he did not sell the liquor by the bottle but for 25c for a glass of 1 ounce, that he only sold three gallons per week, and that he had only sold liquor since the first of February. With 32 ounces to the quart, and 4 quarts to the gallon, selling three gallons a week brought in a revenue of \$96 per week to this defendant. He admits that he did that sort of business for 32 weeks, which would make his income from bootlegging about \$3,072 during that time. The whisky he bought for this business cost him \$528

for 96 gallons. Plus his fine of \$250, his expense was \$778, leaving a profit of \$2,294. I think he will go back at it again, for it's easy money. You see this liquor business is a side-line. He also sells soft drinks, has card tables, and also used to run slot machines, but a complaint went in about them and they are stored away until the good citizens forget about them or quiet down a little.

"I have been a prohibition officer for the State of Ohio for five years, and I have seen many a big bootlegger get some poor old cripple to run his business for him, and then ask the court to be lenient on them when they are caught on account of their age, condition, etc.

"When we go over to Judge E's court at S—, he fines them from \$500 to \$1,000—and the bootlegger does not go before him very soon again. But we can't always get our cases in that court, and we have to do the best we can."

Public opinion is as powerful a force when exerted on a judge, whether he be elected for a term of years or enjoys a life-and-good-behavior appointment, as on any other officer of the law. When judges are notoriously "easy" in imposing sentences, those interested in proper law enforcement should make a careful and detailed record of the facts—and then give proper publicity to them. This has been done in various places—and the result has often been a change of judicial view, and the imposition of sentences that more effectually discouraged prohibition violators.

Another key man in law enforcement is the United States marshal. There have been "leaks" of liquor from marshals' offices and important cases in which marshals and their deputies apparently have gone to sleep while juries were being "approached" on behalf of bootlegger defendants.

Competent and honest prohibition administrators often have had to contend with treachery within their own organizations. I was called upon to assist one who found that within his district there had been organized, under the guise of certain real-estate companies, what really amounted to a "Bootleggers' Intelligence Bureau."

At the head of this bureau was a man who was intimately acquainted with the heads of breweries, distilleries and owners of alcohol permits. He maintained offices under different names, in two states, and had several telephones with unlisted numbers. Through a system of espionage, he kept in touch with the movements and contemplated movements of the Prohibition Administrator's force, and promptly passed on the information to his clients. He not only had his men "spotting" the prohibition agents and other enforcement officers, but even had access to the files of the Administrator.

He employed three former prohibition agents on a straight salary to act as "spotters." They

stationed themselves without and about the prohibition department offices and kept check on the coming and going of the prohibition agents known to them. Then they telephoned the information to the main office of the "bureau." Confidential information of contemplated raids and investigations was also procured direct from prohibition agents and other government employees, who would phone the office of the bureau as soon as they learned of the government's plans.

The manner of corrupting government officials, used by this liquor and bribery ring, ranged all the way from painting glowing pictures of powerful political influence to be used in behalf of the "bribees," and general friendliness and good fellowship, to outright bribery. In some instances, there were payments of money to prohibition agents, as high as one hundred dollars per week. Then there were instances of the sale of radio sets and other merchandise, at half price or less, to people "on the inside" who could give information to the bureau of activities of the Administrator's force.

The head of the bootleggers' bureau maintained a charge account with a theater-ticket agency, with instructions to the agency to issue to his "friends" any tickets they desired, such tickets to be charged to his account. We secured photostatic copies of

the original ledger-card accounts of the head of the bureau with the theater agency, showing the issuance of theater tickets to prohibition agents. On at least five different occasions, tickets were issued to the secretaries of two United States commissioners, who, of course, had first-hand information as to the filing of all affidavits for search-warrants, and the preparation and issuance of warrants. Tickets also were issued to two deputy United States marshals, and on three different occasions to one of the assistant United States attorneys in charge of prosecution of prohibition violators!

The same investigation disclosed that not only did the bureau maintained by the bootleggers and distilleries employ three former agents, but actually had on its pay-roll nine of the prohibition agents in the Administrator's own office! Six of these agents were promptly discharged, three others were suspended pending further investigation.

One of the agents who was discharged had been a trusted employee, working directly under the head of the legal department of the Prohibition Administrator's office. A check of this agent's outgoing long-distance telephone calls revealed that he had been calling the confidential phone numbers of the bootleggers' bureau frequently during several months. When a raid was made on the bu-

reau's office it was found deserted, but in it was discovered a postal card directed to the head of the bureau and signed with the code number of one of the prohibition agents. Long-distance telephone records checked by our investigators showed that the bureau frequently had called practically every brewery town in the state.

The Prohibition Administrator was anxious to prosecute the members of his force who had been unfaithful. We had the obvious difficulty, however, of giving conduct of the case to the District Attorney's office when three of his assistants were closely linked with this liquor and bribery gang.

As long as human nature is what it is, there will be cases of betrayal of public trust by officers of the government, county, state and federal. But if proper care is exercised in the selection of men for the Prohibition Service, and for enforcing the laws in the courts, prohibition proportionately will reveal no more human weaknesses than many other laws. Publicity of actual facts locally has a wholesome effect. The people who believe in law enforcement will have to make a practise of auditing the work of the enforcing officials, not spasmodically but regularly and systematically. Our courts and prosecuting offices need the moral effect of periodical public audits quite as much as banks do.

CHAPTER XVII

ROUTING RUM ROW

THE war of federal forces against the liquor trade has been in progress over ten years. In that time, the government has not won every battle, it is true, but nevertheless very steadily and surely the prohibition forces have moved forward, gaining ground and attaining some of their objectives.

Routing Rum Row is one of the real achievements thus far. It has been accomplished by a real *will* to enforce the law, backed and supplemented by intelligent cooperation and coordination of forces and legal authority.

For a long time newspapers featured operations of Rum Row. Ships with valuable cargoes of choice liquors hovered or lurked beyond coastal waters, to supply bootleggers who could run the blockade along our shores. The most notorious Rum Rows were located off the coasts of New Jersey and Florida. Cities along the eastern seaboard received practically their entire supply of foreign

liquor from such sources. At one time it was quite apparent that no real effort was being made to put an end to such open defiance of our laws. Liquor runners operated off Florida practically in the open, in broad daylight, with little or no interference. There for years the prosecuting office and the prohibition agents engaged equally in the game of evasion of responsibility. Prohibition administrators placed responsibility on United States attorneys and their assistants, whom they charged with dereliction of duty and participation in the graft that all too plainly existed in many quarters. On the other hand, prosecuting officers attempted to place responsibility upon the agents and prohibition directors whose eyes were closed apparently to open violations of prohibition. Both of the principal law-enforcing agencies had what might be termed a "perfectly grand alibi" for conditions that were a national scandal. Such cases as reached the courts were handled by corrupt or evasive agents or "soft-pedaled" by the United States attorneys' offices. That territory furnished, therefore, an ideal place for smuggling ships to hover.

On September 15, 1925, I had recommended a complete reorganization of the United States attorney's office in Florida. Not until April 25, 1929, was that reorganization made effective. Then the

United States Attorney left and men from my office in the Department of Justice took charge and began disposing of an immense docket with an accumulation of eight hundred cases in Miami alone. It requires hard work and an unloosening of political strangulation to bring about real improvement.

My own conviction was—and still is—that prohibition can and will be enforced whenever and wherever there is the will and determination to enforce it, plus the full and proper use of legal authority, man-power and available equipment. Accordingly, early in my term of office, a conference was arranged between the heads of the Prohibition Unit, the Coast Guard, the Customs Service, and those in the Justice Department who were responsible for prohibition prosecutions. Its purpose was to work out a method to stop smuggling.

The hope that Rum Row could be swept out of existence was changed to absolute conviction by personal contact at that conference with the officers of the Coast Guard. After much discussion by representatives of the various bureaus and units as to the difficulty and intricacy of the problem, and the display of a general feeling of hopelessness by many of those present, I turned to the representative of the Coast Guard forces. He was a fine,

clear-eyed, courageous-looking man of the type who is accustomed to battling with the storms that sweep our coast and imperil shipping. With an economy of words and forcefulness of utterance that gave renewed confidence he replied to the query as to what cooperation could be secured from his service:

"We've got enough to do. We don't want the job, but if the Coast Guard gets orders to 'clean out Rum Row,' it will be cleaned out."

The orders were given. Even Congress was aroused. In a few weeks' time, an additional eleven million dollars was appropriated for boats and equipment.

Coast Guard boats have been breaking up icebergs, chasing smugglers and performing other perilous and hazardous work since the early days of our government. It is a splendid service, marked by efficiency, courage and high morale. In eliminating Rum Row the Coast Guard mobilized effectively, kept quiet, risked their lives, took punishment and endured misunderstanding, but accomplished results just the way they have performed every other duty assigned to them throughout the history of their service.

Florida, however, by reason of political hamstringing of shore activities, continued a prohibition

scandal until men from the Justice Department's Flying Squadron force could join with the Coast Guard. We got this started two years ago. We held council and determined to mobilize and cut off the bootleggers' supply of imported whisky for the winter trade.

We dispatched as legal adviser to the Captain of the flag-ship of the special patrol of the Coast Guard, Mr. John H. Smith, one of the staff of attorneys under Arthur Henderson, Chief of the Bureau of Border Cases, in the Prohibition Division of the Department of Justice.

At midnight, January 9, 1928, the marine and aerial bootleggers of Florida found the east and west coasts of that state patrolled by a secretly dispatched special fleet of eleven destroyers, nine one-hundred-and-twenty-five-foot and twenty-five seventy-five-foot patrol boats, eight thirty-six-foot picket boats, two cutters and two amphibian planes, and a plane tender, manned in all by approximately one hundred and twenty commissioned and warrant officers and nine hundred men, all of whom had been withdrawn from the east coast and sent to Florida waters to cooperate with the land and sea forces regularly stationed there.

Immediately upon its arrival, the special armada swung into aggressive and vigilant action. The

destroyer fleet was divided into squadrons of fours, each squadron maintaining a four-day patrol of the waters beyond the twelve-mile limit. The intervening waters, namely, those within the twelve-mile limit, were guarded by the one-hundred-and-twenty-five- and seventy-five-foot patrol boats and cutters, and the coast-line by the picket boats and smaller speedy inshore craft stationed there. The duties of the aerial patrol included detection of illegal air and sea activity and assistance to land enforcement agents in locating stills.

The first liquor-laden vessel to fall into the armada's net was the American lettered and numbered motor-boat *V-16734*. Within three hours after the fleet's arrival, this vessel was observed about three A.M., June 10, 1928, in Biscayne Bay, running without lights toward Miami. Upon her arrival at the foot of Seventy-First Street, about eight men were observed in the act of unloading her liquor cargo into six automobiles minus back seats, which were parked near the boat. In emerging from behind a high wall covered along the top with barbed-wire entanglements, where they had taken concealment, coast guardsmen caused considerable commotion which served as an alarm to the bootlegger longshoremen and at which they all attempted to escape. One of the two bootleggers

who happened to be in the water unloading was captured, but the other effected his escape by submerging and swimming away under water. A search of the boat disclosed a cargo of about two hundred sacks of choice assorted liquors, later appraised at a value of four thousand five hundred and six dollars.

Three days later brought the capture of one of the speediest rum-running vessels then operating in Florida waters. At the time of her capture in Biscayne Bay, this vessel was returning from Gun Cay with a seven-thousand-dollar cargo of liquor. Investigation of this case disclosed that the smuggling venture had been arranged and the liquor cargo purchased by one of the most persistent marine liquor law violators in Florida. This man had left Miami for Gun Cay by aeroplane prior to the vessel's departure. He supervised the unloading at Gun Cay of the liquor cargo into the motor-boat from one of three schooners which were regularly and exclusively engaged in bringing liquor cargoes from Nassau to that place. Gun Cay is one of the three chief distributing places from which American vessels obtain contraband that they attempt to smuggle into Florida. A desperate effort to escape was made by the ex-coast guardsman in charge of this rum runner. From

the time he had been signaled to stop until capture, he was continually changing his course and proceeding full speed in the darkness under a volley of machine-gun bullets. When questioned as to the reason why he refused to stop when signaled, this rum-boat skipper said: "Oh, I knew they had me spotted and were after me, but figured I could zigzag the shots and get away easily, but when those bullets come through the wind-shield over the steering wheel and singed my hair, I thought it was time to quit and give up."

About four A.M., March 12, 1928, a notorious woman rum runner, known as "Spanish Marie," was discovered on the beach at Coconut Grove supervising the unloading by nine of her bootleg employees of the liquor cargo of her rum-running vessel, *Kid Boots*. Marie had fallen heir to the marine rum-running business established by her deceased husband whose corpse, it was reported, had been picked up in Biscayne Bay in 1926. She was reputed to have accumulated considerable wealth out of the bootlegging business through ownership and regular operation of a fleet of motor-boats and automobiles in the liquor, narcotic and alien smuggling businesses.

Not being certain of the honesty of those to whom she had entrusted the land delivery of this

liquor cargo, Marie left her home and two sleeping babies that morning in response to a telephone call telling her of the safe arrival at its destination of the rum vessel from Bimini. Having employed a special pilot boat to scout the coast near the landing place to "spot" coast guardsmen, and to direct the landing movements of the rum boat's crew by means of flash-light signals, she entertained, it appeared, no doubt as to the rum boat's safe and unmolested landing. Overcome with emotion during interrogation on the flag-ship after her arrest, she pleaded for immediate release to enable her to go home to her children. Under the circumstances she was released under a five-hundred-dollar bond for her appearance for a preliminary hearing the following day. On the appearance day she was absent, but was represented by an attorney who moved for a continuance on the ground that his client was at home in bed suffering from nervous prostration. Had not her attorney forgotten to obtain a doctor's certificate showing her condition to be as represented, and had not Marie met and talked with a special under-cover customs agent in Bimini the night before, it is quite possible that a continuance would have been granted and the embarrassment of furnishing a three-thousand-dollar bond in place of the original bond avoided!

The effect of the special patrol's action was being keenly felt at this time both by the bootleggers and thirsty Florida sojourners. Prices for running in liquor had rapidly risen from fifty dollars to one hundred and fifty dollars a load, cash for release on bond in case of arrest being demanded in advance of the trip. Liquor prices had soared from thirty-five dollars to one hundred and twenty-five dollars a case, and notices reading "Closed for business" were to be found posted on a majority of the notorious land bootlegging places throughout Miami.

A check of the Bahaman Custom-House statistics disclosed that during three months' operation of the special patrol, January 1, 1928, to March 31, 1928, there was a decrease of 43,288 pounds sterling (or over \$200,000) on liquor imports into the Bahamas and a decrease of 43,928 pounds sterling on liquor exports from that place during the same period.

A total of one hundred and ten liquor-running vessels were seized during the special patrol's four months of operation in those waters. Arrests aboard these vessels, or made in connection with the seizure of them, totaled between three hundred and four hundred. Practically all the seized vessels and their cargoes were condemned. Conspiracy indict-

ments were returned against nearly all those arrested.

This is merely one piece of evidence as to what can be accomplished if there is a real will to cooperate between various government forces and a real determination to enforce the prohibition law. It is far from being the only evidence or proof of that fact.

CHAPTER XVIII

THE WHISPERING WIRES CASE

IN ONE case of wide-spread interest a prohibition victory was achieved in which I not only had no part but which I actually opposed. I refer to the so-called "whispering wires" case at Seattle, Washington. It involved the prosecution of a boot-legger named Olmstead. I certainly approved of apprehending Olmstead—he was head of a ring of liquor runners from Canada—but I did not approve of the way the prohibition agents obtained their evidence. Practically all their testimony was based on information they obtained by "tapping" telephone wires.

Now I thoroughly disapprove of the practise of tapping telephone wires. Irrespective of its legality, I believe it to be a dangerous and unwarranted practise to follow in enforcing law. Many of the states have laws against such interception of communications. The point involved in the Olmstead case was whether, in the absence of a state law, the Federal Constitution alone prevented obtaining evidence by tapping wires.

When the point was sustained in lower federal courts, and reached the Supreme Court of the United States, I indicated to the Solicitor General my unwillingness to argue the case in an attempt to justify the prohibition agents' wire-tapping tactics of which I thoroughly disapproved. Consequently, the Solicitor General, Mr. Mitchell, employed other counsel.

The facts and points of law involved are so interesting to the average citizen that they may well be briefly outlined here.

Roy Olmstead formerly was a lieutenant of police in Seattle, Washington, who embarked in the liquor business. In one of the cases in which he was involved ninety-one people were indicted and charged with conspiracy to violate the National Prohibition Act by importing, transporting and selling intoxicating liquor. Of these many lived in Canada, and fifty-eight were not apprehended. Of the remaining thirty-three, four pleaded guilty and twenty-one were convicted by the jury. Only eight were acquitted.

It will be seen from this how extensive were Olmstead's operations and how important it was to secure convictions in order to end the operations of a gang that was flooding the Pacific Northwest with liquor.

The gathering of evidence in the case continued for many months. Most of it was secured by intercepting messages on telephones of the conspirators. The wires of the main violators were tapped just outside their homes. The bootlegging organization had an office, and the telephone line from the office also was tapped. The tapping was done without trespass on any of the property of the defendants.

For many months federal prohibition agents listened on these lines. Stenographic notes were made of conversations heard, and knowledge was thus obtained of enormous transactions in liquor.

In this way, prohibition agents heard orders given for liquor by customers, conversations between the members of the bootlegging gang, instructions as to delivery of liquor, and also many highly interesting if not edifying bits of conversation about government officers in general and in particular. The agents also heard through this tapping operation much "news" that was no news to them, such as word passed between members of the gang as to capture of the organization's vessels, the arrest of their men and the seizure of their liquor in garages and other places. Over the "whispering wires" came messages showing how arrested members of the gang had been released, and details of attempted bribery of officers.

The operations of Olmstead were as unique in character as they were extensive in volume. He made connections with a man having some radio knowledge and talent, and together they purchased and operated a radio broadcasting station. This station was used by Olmstead for the purpose of conveying instructions to boats employed by him to bring in cargoes of liquor. Mrs. Olmstead frequently broadcasted from this station, her programs consisting largely of bedtime stories. It was the belief of the agents and investigators that the stories constituted code signals to the boats at sea, advising them when the coast was clear, and where the Coast Guard boats were likely to be.

Olmstead's radio partner, a man named Hubbard, was arrested and joined as a conspirator in one of the cases. The effort to convict Hubbard failed, however, and there were charges that the Intelligence Unit was trying to discredit the Prohibition Unit. Many of the people of the state of Washington who were strong advocates of prohibition enforcement felt that Hubbard's indictment was sought in order to prevent honest prohibition agents from pursuing their work. An intense bitterness developed between the two branches of the Treasury Department, and it was not an uncommon thing for agents of the Intelligence Unit

and for the special assistants to the Attorney General who had been sent to Seattle to handle the Hubbard case, to be "shadowed" by agents of the Prohibition Unit and their friends.

The evidence obtained over the whispering wires and otherwise disclosed an illegal liquor business of amazing magnitude. It involved the employment of not less than fifty persons, of two seagoing vessels for carrying liquor from Scotland to British Columbia, the employment of smaller vessels for coastwise transportation, the purchase and use of a ranch for an underground cache for storage of liquor, the operation of a central office in the heart of Seattle, the employment of executives, salesmen, delivery men, dispatchers, scouts, bookkeepers, clerks and even an attorney. Monthly transactions reached a total as high as one hundred and seventy-six thousand dollars, and the aggregate for the year's operations probably exceeded two million dollars. Olmstead was the leading conspirator. He acted as general manager. His contribution to the capital of the business was ten thousand dollars. Eleven others were his partners by virtue of contributions of one thousand dollars apiece. Profits were divided, one-half to Olmstead and the remaining half to the other eleven. One of the chief conspirators was always on duty at the

main office to receive orders by telephone and to direct the filling of these orders by a corps of men stationed in another room, called "the bull pen." At times the sales amounted to two hundred cases of liquor a day.

In this statement of the case I have largely used the language of the Supreme Court and the Court of Appeals.

The convictions were appealed to the Circuit Court of Appeals, which upheld them, and then the Supreme Court of the United States was asked to review the case. The contention of the conspirators was that the method of obtaining evidence violated the Fourth and Fifth Amendments of the United States Constitution. After first denying the review, the Supreme Court then granted one, and its decision upheld the legality of obtaining evidence by tapping of phone wires.

On the question of constitutionality, the remarks of United States District Judge Neterer are interesting and worth repetition:

"The Fourth and Fifth Amendments can not be emasculated so as to give criminals carte blanche in the use of the public telephone utility, whether the conspiracy is to violate the Eighteenth Amendment and Volstead Act, or for the destruction of life or property, or, perchance, the overthrow of the government. A man's house is his castle, the

four walls of his habitation, the invasion of which was the evil prohibited without a search warrant based on probable cause. These amendments do not make the walls of this house, or castle, co-extensive with limits of the city, state, or nation, and give immunity to criminals in carrying forward their unlawful schemes by telephonic activities. ‘Such a situation would be deplorable and intolerable, to say the least,’ in the language of the dissenting opinion; and in the light of the evil to be guarded against, which must be taken into consideration, such license can not be given, and the law-abiding people of the community, the state, or the nation placed at the mercy of criminals seated in their homes, giving command and direction to co-conspirators throughout the city, state, or nation, and carrying forward the criminal activities. The people have some rights under these amendments, as well as the criminals.”

Although personally I would still use my influence to prevent the *policy* of wire tapping being adopted as a prohibition enforcement measure, I nevertheless recognize that the interpretation of the United States Constitution against the lawbreaker and in favor of the government’s right to apprehend him, was a prohibition victory of no small proportions.

CHAPTER XIX

PUTTING THE LAW IN LAW ENFORCEMENT

BEFORE there can be any kind of effective law enforcement, there has to be *law*, very definite and very certain, to enforce. One of the great complaints of the anti-prohibitionists has been that the things done in the name of prohibition enforcement have been beyond the law. Some of that is true. With any new statute it is of the utmost importance early to clarify its interpretation and unify its application. This can be done only by carrying disputed points to the highest courts for settlement. Much of my effort in the past eight years has been in that direction.

We watched vigilantly for about eight years the decisions of courts on difficult interpretations of liquor laws, in the ninety-two districts of the United States. When a variety of opinions arose between judges we worked to get the question before higher courts. When harmony of interpretation could not be obtained in the various Circuit Courts of Appeal, the questions were brought to the Su-

preme Court of the United States. Just winning cases is much less important than clarifying the law.

With the able assistance of Mahlon D. Kiefer, who has headed the Appeals Section in my office, and Sewall Key, in charge of the Tax Unit, but rendering yeoman service on other briefs, I have submitted two hundred and seventy-eight cases on certiorari to the Supreme Court of the United States, and have helped to settle finally disputed interpretations in nearly two score of cases argued and briefed on the merits. Every one of these decisions brought certainty where legal confusion had been before.

Have you not often been in doubt whether prohibition agents have a right to stop cars on the road? So had many others until the law was settled about three years ago. The case of *United States v. Carroll*, 267 U. S. 132, was briefed and argued twice in an effort to decide whether a car can be stopped on the highway without agents first obtaining a search-warrant. The United States Supreme Court deliberated over the matter for many months. The Chief Justice finally handed down an opinion in twenty pages which reviewed the law from ancient times and decided that although agents can not stop just any car they please, they may, without

a search-warrant, stop one the movements of which they have observed enough to be reasonably certain of its violation of law.

This decision proved to be a bulwark of strength in dealing with rum runners along the border. The court made it plain that every case must rest on its own facts. But the facts which they held sufficient to justify stopping and searching the Carroll car were: first, the agents' knowledge that it had previously been used to carry liquor; second, the fact that it was proceeding from the Canadian border; and, third, that its springs were very heavily weighted down with an unusual load. The public is inclined to break into criticism without waiting to learn the facts when prohibition agents stop cars. It is well to remember that the Supreme Court of the United States has spoken affirmatively in upholding the right to do so, in some circumstances.

Another victory interpreting and strengthening the prohibition law is the case of *United States v. Marron*, 275 U. S. 192. Most bootleggers keep their books just like business men. They record the amount of liquor handled and the payments of graft to the police officers and others on whose protection they depend. Because of the constitutional guarantee to protect a defendant from having to testify against himself and to protect his books and

papers from seizure without a search-warrant, most courts at first refused to allow bootleggers' and other lawbreakers' books which are kept to record their illegal business to be used against them. Government agents in the Marron case went into a blind pig in San Francisco. They arrested the proprietors and seized the books. There was much difference of opinion between government lawyers as to whether such evidence could be used. With deep conviction I briefed and argued the view that the Constitution never intended to throw a mantle of protection around records of crime found incident to the arrest of a lawbreaker. The Supreme Court upheld this view.

Settling the law in this respect has proved of great value in the offensive against big liquor violators. They recognize it, too. Recently I listened to testimony in McNeil Island Penitentiary of a bootlegger who described how, after the Marron case, the ring of which he was a member constructed a room under their garage. It opened by a trap-door in the garage floor which responded to an electric switch. In this vault all books and papers were kept and all records of graft payments and accounting between the partners in crime. The prisoner said:

"We weren't going to argue with the Supreme Court after that Marron case and run the risk of our books revealing all the inner workings of our business. I am here taking my jolt, but there are a lot of our crowd still out because you didn't get our books when you arrested me."

I have always felt that the worst prohibition offender is the agent or official who shuts his eyes to some favored violator's acts. It used to be generally believed, however, that there was no way to punish such an agent other than by reprimanding or discharging him. This gave him, merely because he wore a badge, a kind of sanctimonious immunity that always rankled me.

A case entitled *United States v. Donnelly*, 276 U. S. 505 arose, involving the very question. The prohibition director of a western state was convicted of refusing to prosecute a rum runner when he had plain evidence of his violation of law. The prohibition director defended himself on the ground that the prohibition act punished only commissions of crime, not omissions on the part of agents who failed to report crime. It was a nice legal point. Lawyers' views generally split over it, and the Supreme Court itself was even finally divided. But I insisted that Congress intended to catch defaulting agents just as much as bootleggers. Mr. Mitchell, Attorney General (then Solicitor General), re-

jected my first brief and wrote one himself on the other side of the question. When the case was set down for argument again, I persisted in my view and Attorney General Mitchell, like the fair-minded lawyer that he is, said: "Go ahead. File the brief according to your own views, but I can't sign it with you." We had much friendly bantering in the Department over the fact that I went before the Court to argue a view of the law with my superior officer's brief on file presenting the other side. Although two Justices dissented, the Supreme Court's majority opinion adopted my interpretation of the law, and the opinion written by Justice Butler said (page 572):

"Diligence and good faith on the part of enforcement officers are essential. . . . The infliction of punishment for their intentional violations is an appropriate means to hold them to the performance of their duties."

This opinion has had a noticeably wholesome effect on agents and United States attorneys alike.

Not only has it been necessary to strengthen the law by securing a final interpretation by higher courts of questionable sections of it, but it has been essential to deal with other knotty problems involving international law to keep the country from being flooded with liquor from foreign shores.

The raiding of a bootleg establishment in Chicago without proper search-warrant does not produce very serious consequences; but the seizure of a British ship, even though actually laden with intoxicating liquor intended for thirsty American throats, may produce very serious consequences if the seizure has not been in accordance with international law. One consequence may be the payment of heavy damages by the United States Government, and another and even more serious consequence is the stirring up of bad feeling between nations.

The extent of the rum-running business between foreign shores and the United States may be gauged by the fact that within two years after we had made a treaty with England extending the distance within which we might make captures, fifty-six British rum-running vessels were seized. There were, of course, many other English rum ships, as well as ships of other nations, loaded with liquor for America, that either were not detected or were not captured.

In 1921 the hovering operations of foreign vessels, mostly flying the British flag, amounted to a national scandal. As a practical matter, most of Rum Row hovered from twelve to twenty miles offshore, but sent their cargoes in close to land by

means of small dories. It was like catching mosquitoes to apprehend these dories. If the parent ships were seized, outside of the three-mile limit into which they seldom ventured, England and other foreign countries under whose flags they were registered would protest, and usually the State Department would order the ships released.

One day the Assistant United States Attorney at Boston reported to me a set of facts that I felt sure would admit of a vigorous policy on the part of the United States Government and perhaps make some new law on the subject. The *Grace and Ruby* was hovering about ten miles off Gloucester, Massachusetts. Men came out from the shore in a motor-boat, the *Wilkin II*. A part of the *Grace and Ruby's* crew helped to load liquor into the *Wilkin II*, and then climbed into a dory which belonged to the parent schooner, tied it to the *Wilkin II* and went ashore. Not only was the *Wilkin II* seized, but also the parent ship. Great Britain made protest.

I became so interested in seeing the law crystallized by carrying the case to court, that I went to the State Department and literally took off my hat and coat and rolled up my sleeves to argue with solicitors of that department and representatives of the British Government. I could not

bear to see the United States miss the chance of turning one of Great Britain's own precedents against her. That was one where the British schooner *Aruanah* had been hovering off Russian seal banks but sent her crew and small boats within a foreign Government's territorial waters to kill seals. The British Government had agreed that that constituted an offense by the parent ship. In other words, the parent ship had made a *constructive entry* into foreign territorial waters by means of her small boats, crew and tackle! That was the argument we put up in the *Grace and Ruby* case. The court sustained it, and the United States Government held this rum ship. This theory of constructive entry seriously hampered Rum Row.

Almost every one has noticed recently that every magazine has most attractive advertisements for the use of yeast cakes. They picture such athletic, virile-looking men and women that I take some pride in having had a part in selling the idea to the country!

Such advertisements follow from two cases won in the Supreme Court of the United States which prohibited doctors from prescribing more than a pint of whisky every ten days, or using beer for general tonic purposes.

A large array of most distinguished physicians

led by Doctor Lambert, of New York, urged that such laws were unconstitutional because they unduly interfered with the professional judgment of a physician in prescribing what he thought best for his patient. The Supreme Court room was quite filled with interested listeners during these arguments. The opinions (265 U. S. 545; 272 U. S. 581) upheld the constitutionality of the law.

And so it happens that we nibble yeast instead of drinking malt extract for health and vigor!

Vast sums are made by bootleggers. They never pay income tax if they can avoid it. Frequently the way we have most easily brought them to justice is by investigating first their financial transactions and assessing the tax. A bootlegging buccaneer named Manly Sullivan resisted paying any income tax. And his best defense was that he had made his income unlawfully and it violated the Constitution to compel him to put in a tax return. He won the point, too, before the Circuit Court of Appeals. He tried his own case. He had a sense of humor, quick wit and a glib tongue. The Judge was reluctant to hold him as closely in check in the asking of irrelevant questions as he would a practising attorney. Sullivan was aware of this and imposed upon the Judge's reluctance. He was constantly overstepping the bounds of propriety.

At appropriate places in his examination or cross-examination he would turn aside for comments to the jury. One of these comments was: "You, gentlemen, see how these northerners are harassing me under the prohibition and the tax laws—two of the most damnable statutes on the books of this country."

When I was in the midst of my argument on the law of the case, later to the Supreme Court of the United States, the Chief Justice suddenly burst out in an audible chuckle that quite upset my train of thought. He had found the page of the record upon which Sullivan's comment appeared. He remarked dryly that he had just observed that the defendant in the case seemed to hold very decided views with respect to certain of the federal statutes!

The Supreme Court held in this case that an income tax was collectable on profits illegally amassed. This had a far-reaching effect touching graft, illegal contracts and crime profits of all description, in addition to that derived from illicit liquor. Tax collections from bosses of the underworld have reached many millions of dollars since the Sullivan decision. I maintain that if the man conducting a criminal business is financially pinched in every way that the law permits, it will do as much to deter crime as penitentiary sentences.

The Sullivan decision made crime less profitable, for the illegal operator in making his return does not dare to deduct his outlay for graft. The lower court raised that very point, but Justice Holmes waved it aside in his opinion, saying:

"It is urged that if a return were made the defendant would be entitled to deduct illegal expenses such as bribery. This by no means follows but it will be time enough to consider the question when some taxpayer has the temerity to raise it."

These decisions with dozens of others represent permanent gains in the government's huge task of enforcing the Eighteenth Amendment. The winds of popular disapproval and political excitement over Volsteadism may rage, but those foundations, though unspectacular, are sure and firm. Ultimate orderly enforcement will be built upon them. At moments of discouragement I find reassurance in the knowledge that in this way there has been left from my labors a permanent contribution to the development of constitutional law, a contribution of increasing value as the government proceeds on its task of enforcing the Eighteenth Amendment.

CHAPTER XX

THE JONES "FIVE-AND-TEN" LAW

MANY tears have been shed by anti-prohibitionists, and especially organizations actively engaged in propaganda against the prohibition law, because of the amendment which they have labeled the Jones "Five-and-Ten" Law.

There have been many such comments as this:

"Now you have a law that will let a judge send a woman to prison for five years for selling a quart of whisky; and probably the next thing the prohibitionists will get through is a law giving a life sentence to the bootlegger who is caught a second time, and after that you will probably try to get capital punishment for supplying the stuff that even judges are drinking. The prohibitionists are just getting desperate because they know the law can't be enforced under reasonable penalty."

How much truth is there in such statements?

First, let's see what the Jones law provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That wherever a penalty or

penalties are prescribed in a criminal prosecution by the National Prohibition Act, as amended and supplemented, for the illegal manufacture, sale, transportation, importation, or exportation of intoxicating liquor, as defined by Section 1, Title II, of the National Prohibition Act, the penalty imposed for each such offense shall be a fine not to exceed \$10,000 or imprisonment not to exceed five years, or both: Provided, That it is the intent of Congress that the court, in imposing sentence hereunder, should discriminate between casual or slight violations and habitual sales of intoxicating liquor, or attempts to commercialize violations of the law.

Sec. 2. This Act shall not repeal nor eliminate any minimum penalty for the first or any subsequent offense now provided by the said National Prohibition Act.

I do not believe that *harsh* penalties ever will secure enforcement of or obedience to laws. It is quite true, as stated by some of the anti-prohibitionists, that juries will not convict if the punishment does not fit the crime. Certainly, as the then head of the government department charged with the responsibility for the conduct and success of prosecutions, I should not recommend enactment of a law that would make conviction more difficult to obtain.

Yet the fact is—and I say it without any compunction or pangs of conscience—that I actively advocated the passage of the Jones Bill.

Why?

Simply because there is such a thing as being too lenient and "easy" with the criminal. The result is bound to be disastrous for law-abiding citizens.

The prohibition enforcement problem would not have reached the proportions it has to-day if there had been adequate penalties prior to passage of the Jones law that would have deterred, discouraged and frightened the thousands who embarked on bootlegging with this thought in mind: "Well, even if I do get caught, I will only get a one-hundred-dollar fine or a couple of months in jail. The money I can make justifies that much risk."

Let us see what the situation was up to the time of passage of the Jones law.

Willie Haar, of national bootlegging fame, whose profits reached the alleged sum of seven million dollars, after conviction with some sixty of his confederates, under a conspiracy charge, was given the maximum sentence the judge could impose. That sentence was two years! And it wasn't imposed under the prohibition law. Under that law Haar could not have been sentenced to more than six months in jail and a thousand-dollar fine. In other words, a man who had by bribery, corruption, fraud and perhaps violence and theft, distributed

liquor through many states, contributing to the downfall morally and physically of many persons with whom he never came in contact, was subject to less punishment than he would have been if convicted of stealing a gold watch or diamond ring in any one of most of the states.

Consider for a moment the actual case of an Indian agent who simply defrauded the government of petty sums in supplying groceries and other necessities to Indians on their reservations, and who thus violated two sections of the federal statutes. The agent had a family to support and was working for a salary of only fifteen hundred dollars a year. Nevertheless, he was sentenced by a federal Judge to seven years' imprisonment in Atlanta Penitentiary.

On the other hand, a bootlegger, whose sales of liquor traced by the Treasury Department amounted to so many millions of dollars that he was subject to a tax assessment of over a million dollars, was sentenced to but six months in jail!

There were other equally startling disparities in the penalties applying to bootleggers as compared with other criminals.

Any person who imports goods in violation of the customs law, or who sells such goods after importation, may be imprisoned two years.

In other words, if John Smith had been convicted of smuggling into the United States *empty* bottles, a judge could have sentenced him to the penitentiary for two years, and could have fined him five thousand dollars. But if John Smith instead had smuggled into the United States hundreds of gallons of whisky, prior to the Jones Amendment he would have been subject to a maximum penalty of only a five-hundred-dollar fine.

A drug importer failing to pay the tax levied on opium may be fined ten thousand dollars and imprisoned for five years, or both. If a manufacturer fails to affix the required revenue stamp on phosphorus matches, he is liable to a sentence of two years in prison. Another man, manufacturing tobacco without giving the required bond, is subject to a minimum sentence of from one to five years in prison.

For certifying a check when a depositor has not sufficient funds, the National Banking Act provides a penalty of imprisonment in the penitentiary of from five to fifteen years. If any army officer while in an intoxicated condition at a polling place interferes with an election he is liable to a sentence of five years' imprisonment, or a five-thousand-dollar fine.

The fact is that the penalties of the Prohibition

Act were inconsequential during the first ten years of its enforcement, or attempted enforcement, and they were totally out of proportion to the big offenses which constitute the real federal problem. They were out of proportion to the penalties that follow violation of other federal laws. Yet the violation of the Prohibition Statute is a violation of the Constitution itself.

The Jones Amendment is not a new law. It leaves most of the Volstead Act untouched, raising penalties for violation of such sections as specifically parallel the Eighteenth Amendment. Only maximum punishments are raised. The judge is simply given a larger sliding scale in order to enable him to fit the punishment to the crime. There has been raised by the anti-prohibition press a great hue and cry over the outrages judges may commit under it in sentencing college boys, mothers with small children and men who carry flasks on their hips, to the penitentiary for five years.

Federal judges are appointed for life. They are officers chosen for their wisdom, integrity, fairness and discretion. Every day they sentence hundreds of offenders under laws that have a sliding scale of punishment, enabling the sentence to vary from a fine of a dollar to twenty-five years in the penitentiary. We can trust judges. Certainly govern-

ment is in a bad way if we can not safely leave the fate of a college boy who carries a flask to the football game to the sound discretion of a federal judge before whom he might be brought. There isn't an objector to the Jones law in the entire United States who could point to a single federal judge in whose hands that boy's fate would not be safe.

Written into the amendment itself, for the guidance of the judges, is the provision that "it is the intent of Congress that the court, in imposing sentence hereunder, should discriminate between casual or slight violations and habitual sales of intoxicating liquor or attempts to commercialize violations of the law."

The value of the amendment lies in the fact that a Chicago racketeer can—or should—no longer feel safe. The judge now has the power to send the professional criminal bootlegger to the penitentiary for five years, and neither the racketeer nor his patrons like that.

Every safeguard for tempering justice with mercy still is left around the casual or minor offender. He can be punished by merely a fine. Or he can be sentenced to an hour or a day in jail. And there still remains in force the probation statute, under which the judge can suspend the entire sentence.

So, it is clear, the Jones Amendment is not oppressive, nor is it even unduly harsh. It is right for the judge to be able still to deal leniently with the exceptional case. The Jones Amendment simply arms the government for effective warfare against the type of lawbreaker whose violations are numerous, persistent and on a large scale. The law needed strengthening so that he who violates the Constitution for the purpose of making money might be dealt with in a manner such as to compel respect for the law by those whose respect and obedience can be secured in no other way.

There would be little opposition to this amendment if it pertained to anything except prohibition. The little criminals and little drunkards will never overthrow the dignity of the law. We have drifted along for ten years with conditions becoming worse until a grave danger has arisen. It is the commercial class of law violator—the racketeer, alcohol baron, and rings of rum smugglers—who combine their lawlessness with entrenched political power, and to whom the Volstead Act prior to amendment was no more than a cobweb of restraint. Any fine under it was less than a license, compared to the profits of the business. And it was easy for such violators in effect to hire substitutes to go to jail for short terms.

In a large city not long ago an alderman was indicted. He is alleged to have organized a five-million-dollar company to engage in a systematic violation of the prohibition law for the specific purpose of commercializing crime and making money out of defiance of the law. My experience as a law enforcement official has convinced me that the Volstead Act needed to be amended so that when that alderman stands up for sentence, the judge may have the power to mete out something reasonably proportionate to such an offense. Before the Jones Amendment the price would have been six months in jail or a five-hundred-dollar fine—for the profits to a five-million-dollar illegal combine!

Another beneficial result of the Jones Amendment is that it should end the too prevalent use of the conspiracy statute. United States attorneys, when given evidence of huge sales or manufacture of liquor on a commercial scale, in order to avoid the toothless penalties for misdemeanor offenses of the Volstead Act, have charged the defendants with "conspiracy." The conspiracy statutes thus have been distorted. They never were intended for such wide-spread use. Federal judges, including the Chief Justice of the Supreme Court, have condemned such unwarranted resort to conspiracy indictments in liquor cases. The man who transports

a truckload of liquor should be charged with transporting. The man who sells large quantities of whisky should be charged with sale; and he who manufactures gin should meet that charge before the bar of justice. That is the forthright way to go about law enforcement. That is what the Jones Amendment enables prosecutors and judges to do.

The Jones Amendment to the Volstead Act also makes possible prosecution of the man who purchases liquor from a bootlegger. That is because sale has been made a felony, and therefore Section 251 of the United States Code can now be applied to the buyer. Section 251 provides that whoever helps in the commission of a felony shall be fined not more than five hundred dollars or imprisoned not more than three years, or both. If, therefore, a man purchases a case of liquor, he is helping in the commission of a felony and may himself be charged with misprision of a felony.

There has been wide-spread criticism of the Jones Amendment on the ground that hereafter every prohibition violation will have to be presented to the grand jury, causing hopeless congestion of jury and court dockets. No one who is informed upon the various statutes can maintain such a contention. Almost every violation reported by prohibition agents is a legal infraction of no less than

five sections of law, to wit: (1) some of the internal revenue statutes existing prior to prohibition; (2) the possession, (3) nuisance, (4) transportation, (5) sale, or (6) manufacturing sections of the National Prohibition Act; (7) the tariff act; (8) the customs act; and frequently (9) the prohibition law of the state.

Manifestly, no prosecutor multiplies charges—and work for himself—on the same set of facts, by pleading violation of all these statutes. It is the duty of the prosecuting official to study his evidence and then plead the case under the statute best suited.

It is also an important part of the duty of a prosecutor to follow the intent of Congress: *i. e.*, that slight violations should be distinguished from commercial and habitual infractions of the law. If, therefore, the prosecutor has evidence of a “hip-pocket pint” he does not need to take the case to the grand jury. He can proceed on a “possession” charge by filing an information. If the evidence shows commercial “crime-for-profit” features he *should* take it before the grand jury. It is the prosecutor’s duty to exercise a sound discretion in choosing the proper charge. If he does, the grand-jury alarm fails.

The Jones Amendment to the Volstead Act is

already proving effective. It is not congesting courts. They were congested years before it came along. In districts where United States attorneys have organized their work properly and are using common sense, the new law is not proving burdensome to grand juries. The little local misdemeanor cases ought to be turned over to the state courts in any event. The chief responsibility of the Federal Government is to reach the bigger offenders—the class known as racketeers. The Jones Amendment gives the prosecutor and judge power to punish such violators adequately instead of giving them a "slap on the wrist" as the Volstead penalties did for ten years.

But no prosecutor can rightfully refuse to proceed against violators under the Jones Amendment on the ground that to do so would congest court dockets. The fact is that present congestion of court dockets, particularly in the larger cities of the East, is very largely the result of failure of prosecutors to prosecute vigorously, and honestly, in the past. It is due in part, also, to the failure of some judges to expedite the trial of liquor cases and to impose the all too lenient *maximum* sentences of the law as it was before amendment.

One case vigorously handled resulting in a long sentence against a real "bootleg baron" will do

more to prevent congestion of dockets in that district than pleas of guilty and fines in five hundred small liquor cases. I have seen such results follow where Judge Grubb holds court and imposes substantial sentences for commercial violations. I have seen it proved in Savannah, in Chicago, in East St. Louis, in Kansas City, in Los Angeles, in San Francisco, in Buffalo and Detroit. I am not speculating; I *know* that the Jones law penalties applied according to the intent of Congress, against the commercial violator, will command respect, eliminate the necessity for thousands of little cases, simplify procedure and strengthen enforcement.

CHAPTER XXI

THE OUTLOOK FOR PROHIBITION

IT SEEMS to me I can hear many of those who have read thus far saying: "Well, assuming that all you have said is true, is it worth while to continue to make an effort to enforce prohibition? Even if improvement can be made in the method of enforcement, isn't it clear that there is too large a body of sentiment against the law which will keep it from ever being effectively enforced? Ought we to continue to throw temptation in the way of public officials, from constables and justices up to district attorneys and federal judges, by placing in their hands the enforcement of a law which offers such fat opportunities to violators that they are able to corrupt the whole public service by bribery?"

Many persons who ask such questions are not opposed to prohibition in principle. They would be perfectly willing to continue to sacrifice their own "personal liberty" if they believed that to do so would protect any considerable number of their fellow citizens from the evil effect of over-indulgence in alcoholic liquor.

Such questions are largely the fruit of seeds that have been broadcast throughout the land during the past half-dozen years by organizations opposed, conscientiously and otherwise, to the Eighteenth Amendment.

At first the great outcry of what may be termed the "professional wets" was against the violation of the so-called inalienable right of personal liberty. But the campaign based on the personal liberty issue was a woeful failure. The mass of citizens refused to become greatly exercised about the right to get drunk or even drink. For a long time the wets rang all the changes on that theme. Powerful orators, including such convincing speakers as Senator James A. Reed, wept copiously over the loss of their fellow citizens' individual liberty—to have liquor and get drunk. Somehow the appeal didn't "take." A great many people probably remembered equally heartrending sobs about personal liberty when laws were proposed to limit the hours of labor for women employed in factories, for young children working for a miserable pittance in sweatshops, for men who worked sixteen or eighteen hours a day at steel furnaces and in railroad service. The fact is, personal liberty has come to mean less to the mass of American citizens than the good of the community and the nation gener-

ally. The professional wets were probably the last large class to recognize that fact; but they do, now.

Since the personal-liberty appeal failed, the strategy of the wets has been to divide the enemy and capture the segments one by one. That strategy has had some success. They have also sought to lend "respectability" to their cause by the use of the names of reputable professional men.

Before me as I write this is a letter on which is engraved "The Voluntary Committee of Lawyers, Incorporated, 27 Cedar Street, New York."

That letter bears the signatures of such well-known and highly respected lawyers as Henry W. De Forest, Joseph H. Choate, Jr., Samuel H. Ordway and others. It states:

"The voluntary committee of lawyers offers to these members of the bar who believe that the 18th Amendment and the enforcement Act have created an intolerable situation an opportunity to clarify and influence public opinion by an expression of their views. In the past the public has looked to the bar for guidance, particularly on questions involving the principles of Government, and we believe the bar should not fail to assume its traditional leadership in the outstanding issue now facing the people. Our present activities are limited to securing the support of representative lawyers throughout the country and to encouraging bar associations in various states to adopt resolutions advocating the repeal of the 18th Amendment."

This is just one of many organizations that have assiduously endeavored to instil in the public mind the single thought concerning the prohibition law, "It can't be enforced."

Possibly it has won a considerable number of adherents to the cause of nullification and repeal. But there is evidence, on the other hand, that such appeals have struck a spark of resentment in the breasts of many citizens which is kindling a determination to enforce genuinely and effectively the Constitution and the laws enacted thereunder. Here is some of that evidence, taken from a letter addressed to the Voluntary Committee of Lawyers by Honorable Julius E. Haycraft, Judge of the Seventeenth Judicial District, in Minnesota. While it is lengthy, it so accurately expresses the sentiment of millions of people that I quote it in almost its entirety:

"You ask for an estimate of the sentiment of the Bar in this judicial district. The sentiment of the Bar in this district is overwhelmingly, perhaps unanimously, opposed to the repeal of the Eighteenth Amendment. It is possible that there are two or three lawyers in the district who favor such repeal, but I have never heard one so express himself.

"I made some inquiry of the members of our Bar about your communication. All of whom I inquired informed me that they threw it in the waste

basket. Whether all who received it did so, I do not know.

"I do not believe you will succeed very well in this State. Certainly not in the counties where I am familiar with the sentiment. Justly or unjustly, there is a strong prejudice in the Middle West against New York City as to anything pertaining to the liquor situation.

"The almost universal sentiment here is that New York, by the repeal of its liquor enforcement act, has done more to bring the Eighteenth Amendment into disrepute than anything else; further that the repeal was intended and enacted for that express purpose. That it was enacted, under the hope and belief that it would create a condition which could be pointed to as intolerable, insufferable, etc. The people here believe that it is inconsistent, if not reprehensible, for those who have created a situation, called intolerable, to be the first to complain; that people of such a community should not take the lead in this matter and should not advise other people or conduct a 'campaign of education.' This is especially true where they undertake to educate the people of a section where the law is unrepealed, observed and enforced.

"This judicial district in size is fairly representative of the state. It consists of three counties, with a population of about 60,000. No law is better enforced in the district than the liquor law. No reputable, trustworthy citizen, residing here, would claim otherwise.

"Your right to organize and work for the repeal of this part of our Constitution is conceded. A citizen has the right to agitate for the repeal of any law or any part of the Constitution. He has the right, if he sees fit, to agitate for the repeal of the Bill of Rights.

"Personally, I believe you will fail in your undertaking. I sincerely hope so. Your efforts will, in my judgment, lend additional hope to the bootlegger and the liquor outlaw. Your activity among the members of the Bar may make it more difficult to enforce the law, but the law will be enforced. We will keep our communities clean, and do it by enforcing a law such as New York repealed. We are not asking the Federal Government to police our cities and towns in the matter of liquor law violation, or in any other particular. If you want to welter in law violation, with 32,000 speakeasies, strike down all law for the curtailment of such places and yield to the law violator, rather than oppose him, it is your right to do so. But, in all fairness, you ought not to become advisers to people who maintain effective law enforcement in other communities.

"I note that you contend that the Eighteenth Amendment encroaches upon the powers properly reserved in the states. It cannot encroach more on state powers than the Thirteenth Amendment. The same argument was made against the Thirteenth Amendment as is now made against the Eighteenth, in both instances it was contended that the matter prohibited was a matter for regulation and control by the states.

"Slavery was prohibited by federal amendment because it was a national curse and wrong. The liquor traffic was prohibited in the same manner, for exactly the same reasons. Lincoln said of slavery: 'If slavery is not wrong, then nothing is wrong.' If the liquor traffic, as it existed in this country, was not wrong, then nothing is wrong. After all, one great principle of law, constitutional or statutory, is to prohibit that which is wrong.

"Your proposition is that of the Defeatist, a

proposition for a declaration of failure. A declaration, that, in the matter of Prohibition, the administration of law has failed, that our courts are failures, that the Nation and the States are likewise failures—unable to cope with a certain class of offenders. (Of course, this could not be said of New York, because she has not even tried. She has not failed—she simply has not functioned.)

“Your invitation to the lawyers of the country is an invitation to surrender, an invitation for our courts, municipalities, state and federal governments, to surrender to the bootlegger and the liquor bandit. Personally, I refuse to join the Defeatists’ propaganda of failure by hue and cry. I refuse to surrender to the forces named, or at all.

“You asked for an estimate of sentiment here. The foregoing is a fair and frank statement of such sentiment, together with some indication as to my own personal attitude.”

Like Judge Haycraft, I have no grievance against the men who form such organizations as the Voluntary Committee of Lawyers. I fully agree they have the *right* not only to their opinion but to broadcast that opinion and to influence others to accept it, although personally it seems to me in questionable taste for “officers of the court,” sworn to uphold the Constitution of the United States as officers are, to engage in opposition to a part of the Constitution in the manner this committee is doing.

Years and years of public agitation by temper-

ance advocates were necessary to build up public sentiment to the point of acceptance of national prohibition. Yet many wets have overlooked the fact that the Eighteenth Amendment was no "hastily inflicted calamity" as anti-prohibitionists denominate it. It was the culmination of educational and political work by temperance societies, church organizations and millions of individuals. They had learned by personal observation or costly experience that the liquor traffic under any system of regulation created exactly the same kind of conditions about which anti-prohibitionists are now complaining: graft, corruption, public disorder and mal-administration of justice. The difference between the "old days" and the present is one of degree, not kind.

Before national prohibition each community, each county and each state was interested primarily and almost exclusively in its own particular liquor-trade difficulty. In nearly every city, county or state election prior to prohibition there was a liquor issue voted upon. The issue might be the replacement of a sheriff who had allowed blind pigs to operate by a candidate who had the endorsement of the Anti-Saloon League; or the issue might be the raising of the license fee for saloons from five hundred dollars to one thousand dollars in order to re-

strict the number; or the issue might be the election of aldermen who would pass an ordinance to close saloons on Sunday or by midnight. But there was always a definite focus of local attention on local liquor evils. The Eighteenth Amendment and the Volstead Act amalgamated, merged, consolidated and centralized all these issues into one grand national movement: the prevention of the manufacture and sale of liquor anywhere in the United States at any time.

When prohibition became nation wide, the subject *for the first time* became "big news" for the city press. The passing of a local option law in North Dakota prior to prohibition meant practically nothing at all to the editors of the New York, Philadelphia or Chicago newspapers. But the closing of the thousands of licensed barrooms in their own communities by national prohibition was news of the biggest kind. Most editors of the metropolitan press probably do not yet realize that prior to adoption of the Eighteenth Amendment, out of 2,540 counties of the United States all but 305 had declared themselves dry. I do not think they yet realize that the Eighteenth Amendment to the Constitution was ratified by more states than any other amendment that ever has been adopted—forty-six of the forty-eight states.

I do not think most of those who declare, by word of mouth and in editorial utterances, that "prohibition can't be enforced" realize that repeal of the Eighteenth Amendment is almost an impossibility. Let it be repeated, therefore, that a bare majority of one or the other branch of the legislature in thirteen states (one more than one-fourth of all the states) could block the ratification of repeal of the Eighteenth Amendment.

The paid leaders of the various anti-prohibition organizations realize the force of these things, of course. But they realize also that even though the Eighteenth Amendment is probably permanently embedded in our Federal Constitution, it can be ignored and nullified by lack of enforcement if the "right people" can be put in the right places in state capitols and elsewhere. The principal one of the places they have in mind is the White House in Washington, D. C.

What these anti-prohibition leaders do not realize fully is the fact that in spite of all the wet "educational campaigns," paid propaganda, and the mistakes of enforcement that have created a large outcry against prohibition, the majority of the people of the country are still against legalizing the liquor traffic in any way whatever. The editors of metropolitan newspapers which condemn, and

rightly, Congressman X for voting for the Jones "five-and-ten" law at three o'clock and then going to his office at three-thirty to phone his bootlegger for a case of gin, simply do not understand the Honorable Mr. X.

The Eighteenth Amendment and the Volstead Act did not cure his thirst. But Congressman X, who spends many months each year mingling with the quarter-million people in his district, attending picnics, making Fourth of July orations, addressing unions on Labor Day, laying Masonic and Odd Fellows' cornerstones, writing letters to veterans who want their pensions increased, and kissing babies at election time, knows very well that a substantial majority of the people of his district do not want the prohibition amendment repealed. There are a large number of persons in his district who crave liquor and who manage to obtain it, but seven or eight out of ten of the Congressman's constituents, counting both men and women, neither buy liquor nor sell liquor.

It would be folly to deny that the wets have made considerable gains in the last few years. In the first place, they have won some millions of people into the habit of saying that prohibition can't be enforced. If they can continue winning additional numbers to that view, then eventually

they will be able to put into office men who will let the law enforce itself—if it can. In a practical way, they have made a great gain in securing the repeal of state enforcement laws in New York, New Jersey, Montana, Nevada and Wisconsin, throwing the entire burden of enforcement there upon the Federal Government.

I shall not denounce their activities except by quoting what Senator Borah has said:

“Bolshevism in Russia, Fascism in Italy, military dictatorship in Poland, promised dictatorship in other countries, increase of arbitrary power everywhere, and nullification openly preached in the United States,—they are all whelps from the same kennel, they are barking at the same thing, to wit, constitutional government.”

The defeat of Governor Smith in the last presidential election did nothing to allay the sentiment against prohibition. Instead, it produced what might be called an “emotional hangover.” The defeat of their candidate rankled those who sincerely believed that Governor Smith, as President, could and would produce a better method of dealing with the liquor problem.

In another way, however, the candidacy of Governor Smith was *beneficial* to the cause of prohibition. Governor Smith centered national atten-

tion upon the subject. Nothing helped so much to clear the air as the last presidential campaign, deplorable as some phases of it were in some respects. For almost the first time in ten years of wielding of empty arguments and emptier generalizations, basic facts and candidates' view-points were revealed and discussed with authority. The prohibition discussion finally reached the "brass tacks" stage, and a definite clear-cut issue was presented to American voters. Inevitably, my part in the campaign consisted of discussion of prohibition; and everywhere I found unprecedented interest in that issue. In small communities where the only meeting-place was a court-room or lodge hall, built to accommodate a few hundred people, a thousand or more would crowd into every inch of space, and twelve or fifteen hundred people would gather outside to be addressed later at an overflow meeting.

The candidacy of Governor Smith, his own declaration in favor of what might deceptively be termed "a constructive policy of modification," and the realization finally by the drys that the forces opposed to prohibition had been making substantial gains through nullification of state enforcement and otherwise, all tended to revivify the original prohibition forces. They had more or less been accepting prohibition as an accomplished fact, and had

been to a considerable extent in an inactive condition.

The assault upon prohibition by the forces of Governor Smith not only awakened those who had brought the Eighteenth Amendment into being; it brought to attention, and to the colors of prohibition enforcement, millions of good citizens who "can take a drink or leave it alone," who aren't primarily concerned with prohibition as such, but who resent a flouting and undermining of the law by criminals working in conjunction with self-serving politicians.

In addition it brought into open and active advocacy of prohibition an important group who viewed the question from the standpoint of economic benefit. Such men as Henry Ford, Filene, of Boston, Edison and Durant, believe, whether rightly or not, that prohibition is very largely responsible for the greater prosperity of the mass of people. The possibility of a return to the old conditions stirred these men into activity in behalf of prohibition enforcement by its friends.

As to the attitude of the majority of women of the country, about which I am often asked, I speak with even greater assurance.

Some months ago I talked to about two hundred women of an organization in a western city, nearly

all of whom were by natural instinct, occupation and environment constitutionally opposed to prohibition. Nevertheless, most of them expressed the opinion that the "dry crows," as they designated the then new national administration, should be given a sporting chance to make good on their promise of enforcement. Moreover, from sheer social sportsmanship recognized social leaders are making "dry parties" stylish. Mrs. George H. Strawbridge, of Philadelphia, sent out letters to twenty-three hundred prominent families in the Philadelphia "Blue Book" without knowledge of their views on prohibition, appealing to them to help set the social standards for law observance. She received two hundred and forty-seven replies opposing the plan, while thirteen hundred and thirty-seven answered favoring it.

The predominating dry sentiment among the women of the country is not so noticeable, of course, among those who congregate in country clubs and who have plenty of leisure and very little work. Nevertheless, any one whomingles freely with all classes of women is bound to discover very soon that the majority are opposed utterly and unalterably to reestablishment of open saloons, and they think any relaxation of enforcement is a step in that direction. Most women still lean economically

upon men, their fathers or their husbands. Even if they have property they let men of the family handle it.

The saloons deprived women not only of the companionship to which they thought they were entitled but absorbed money which the women felt they were entitled to share. For selfish reasons, quite as much as moral reasons, the women of the country will continue to cast their influence for prohibition. There is better furniture in the homes throughout the country now than ever before, simply because a woman is able to divert a larger part of her husband's income to household uses than in the days of the saloons. There are more other luxuries in which the family can share: automobiles, music lessons for the children, and the like.

The modern girl, who makes no protest when her escort to dinner produces a pocket flask and shares its contents with her, has no present stake in prohibition enforcement. But the moment that girl marries, she probably will, whether consciously or not, become a supporter of prohibition, because she always will be unwilling to share any part of her husband's income with either a bootlegger or a saloon-keeper operating legally. I am convinced that as far as the women of the country are concerned, prohibition has come to stay.

There is another factor of an intangible nature which tends to give permanency to prohibition. That is the peculiar characteristic of the American people to attempt and finally to accomplish the seemingly impossible. That characteristic was discernible in American participation in the World War. We might have confined our participation to financial aid to the Allies, and to furnishing them with food, ammunition and supplies. Instead, we put into the World War every ounce of our national energy.

We set about building not dozens or scores of ships, but literally hundreds. We trained and sent across the ocean two million men—something never before attempted and something considered absolutely impossible by the German high command as well as the Allied commanders.

It is characteristic of our people to find a way to accomplish the “impossible.” Prohibition has engaged the minds of our people as nothing else ever has, except the issue of slavery. It challenges them.

The mass of people finally have come to the realization that there is no present prospect of a legal substitute for national prohibition. Repeal of the Eighteenth Amendment is practically impossible until there has been a clear demonstration of

its unenforceability. Most people still believe that there has not been a real effort so far to bring about effective enforcement. Furthermore, the new national administration has not yet had opportunity to deal comprehensively with the prohibition problem. Congress, which holds the purse strings of the nation and which alone can authorize some very extensive changes in methods of enforcement and organization, has had to devote practically all its time to the emergencies of farm relief and tariff adjustment.

Repeal being out of the question at this time, most citizens realize there is only one thing left to do: attempt with every ounce of national energy to improve our efforts to enforce the prohibition section of the Constitution and the laws enacted under it.

Even anti-prohibitionists can agree on no "substitute." They realize that Congress could not, if it would, pass a law that would survive constitutional tests in the courts, permitting the sale of so-called "light wines and beers"—for anything that would satisfy the craving for liquor would, in fact, be intoxicating and therefore in violation of the Eighteenth Amendment.

Governmental sale or dispensation of liquor has been tried in European countries, in Canada, and

even in some of our states, with a woeful lack of success as is well known. State and local option were tried for years, and their failure brought about the demand for national prohibition. All these things have finally become clear to a much larger mass of the people and their decision is: "Let's give prohibition a real trial. Let's catch a second wind and go at it again."

And so, although within the past few years prohibition has lost a number of supporters, who have been converted to the belief that enforcement is impossible, in my judgment, and that of the great majority of our ninety-six United States senators and four hundred and thirty-five congressmen, the will of the people is still for prohibition and better enforcement.

The outlook is not repeal of the Amendment or modification of the law, but improvement in methods and renewed determination to get results.

CHAPTER XXII

CAN PROHIBITION BE MADE EFFECTIVE?

AN anti-prohibitionist wrote, on hearing of my resignation: "You are retiring from office after eight years' futile attempt to enforce an unenforceable law. Why not be honest and admit enforcement is impossible?"

The answer to that was and is that all my experience, both where the efforts were futile and where they brought results, tends to strengthen the belief that the prohibition law *is* enforceable. It is as enforceable as any other law declaring a change in public policy is in its early stages. There is practically no law that is not violated, and frequently violated. The fault lies not in the law but in ourselves who administer it. A law is a failure not when there are frequent violations, but when it fails to protect society as a whole against destructive anti-social forces.

The mere fact that prohibition closed 178,000 saloons, where liquor might be obtained night or day in almost unlimited quantities, is an outstand-

ing proof of its worth. Even if proof could be adduced that for these saloons were substituted 178,000 bootleggers, or 278,000, there would still be justification to claim some gain. No one will seriously contend that the bootleggers, however numerous they may be, are selling as much liquor as the saloons. No one will seriously contend that the majority of people approve, or fail to condemn, the business of bootlegging.

The sale of intoxicating liquor has been outlawed not only by law, but by the hearts and minds of increasing thousands of the people of America. That one fact makes it possible to say with assurance that prohibition can be enforced.

But how?

In the beginning, it should be understood that there is nothing extremely complicated or intricate about the problem of enforcement of the prohibition law. The task of enforcing that law is in its essence as simple as is that of enforcing any other law. There is just one way to bring about enforcement of a law. That way is definitely to establish and maintain personal responsibility for enforcement.

This can best be explained by illustration. In each county of the United States, there is one person whose responsibility it is finally to enforce the

law against murder. If that person fails to prosecute murderers, or connives or conspires with murderers, his term of office will be short; the community will not tolerate a condition that is dangerous to it.

The failure of prohibition enforcement, its lack of effectiveness so far, is due very largely to failure definitely to center and charge personal responsibility.

The condition was accurately pictured in a cartoon drawn by J. N. Ding, entitled "When the Commission to investigate law enforcement begins to investigate (Exhibit A)."

The cartoon shows a party of distinguished gentlemen, with high hats, carrying note-books, and in charge of a guide, making an investigation of "The Buckpassers' League." The Buckpassers' League is represented as a long row of men leaning back in their chairs, with their feet on their desks, all of them blithely engaged in tossing about high in the air, from one to another, a straw man labeled "Law Enforcement." Those who sit at the desks and who are engaged in this sport are labeled "Courts," "County Attorney," "Grand Jury," "Detective," "Sheriff," "Expert Witness," "Alienist," "District Attorney," "Jury," "City Government," et cetera.

This is a true picture of present conditions. It is a condition that can be corrected. Undoubtedly out of the investigation by the President's Law Enforcement Commission will come definite recommendations that will be of value in cutting red tape and centralizing and definitely establishing responsibility. Long before that Commission's report can be acted upon, however, a great deal can be done to put prohibition on an effective basis.

Every law, whether applying to a single village or the whole nation, must be locally enforced if it is to be effectively enforced.

I am not seeking by this statement to relieve the Federal Government of any responsibility for enforcement of the prohibition law. Every speech I made in the 1928 presidential campaign was directed to convincing the people that the President of the United States can almost "make or break" the Constitution. This is true not only with respect to prohibition enforcement, but enforcement of the other laws enacted under federal authority: the anti-trust laws, the pure food laws, the laws for the protection of men employed by railroads in interstate commerce, et cetera. If the President (and I am speaking now not of any particular President) is of such a disposition or temperament that he avoids conflict, or endeavors to assure his

own reelection by seeking the favor of politicians controlling state delegations, he can make prohibition enforcement difficult or ineffective. He can make political "trades" and appoint unfit federal judges, district attorneys, marshals and other officers of the law. He can fail to remove from office men who have deliberately violated their pledge to enforce all laws, including the prohibition law. He can appoint to or retain in office men who are either half-hearted or incompetent in the administration of the prohibition law.

The President appoints the heads of the various principal departments of the government, including the Secretary of the Treasury who has general supervision over the work of the Prohibition Unit or Division. The Secretary of the Treasury also supervises the collectors of internal revenue, customs agents and inspectors, and various forces of investigation whose duty it is to detect violation of the federal laws. Furthermore, the President appoints the Attorney General who supervises the United States district attorneys throughout the country in prosecutions under the prohibition law and other federal statutes. An indifferent, hostile or incompetent Attorney General can prevent effective enforcement of the prohibition or anti-trust law, or any other federal law of importance. The re-

sponsibility goes back to the right exercise of the presidential appointing power in the final analysis. The President has full and exclusive power of appointment in the District of Columbia. There alone he has the power to set up a clean, vigorous, orderly and businesslike municipal government.

No official in Washington, however,—not even the President,—can adequately enforce the prohibition law or any other law throughout the United States, without local cooperation. The President, acting through his Attorney General and a cooperative Senate may appoint an honest, earnest, sober, competent district attorney in one of the larger cities of the country. But if the people in that city are indifferent to their obligations to vote, to keep or make the municipal and state governments—including, of course, the police force—honest and efficient, the United States attorney will be tremendously hampered and usually thwarted in his efforts to enforce the law. Enforcement, then, presents the problem of bringing the state and national agencies into unit formation. This is the standard toward which to work. Some states will present stubborn resistance, but inspiration and leadership from the White House will keep them advancing toward that high aim.

CHAPTER XXIII

SPECIFIC RECOMMENDATIONS FOR IMPROVING ENFORCEMENT

MORE than five years ago a committee of experts, appointed under congressional authority, made a report to Congress on reorganization of government departments in the interest of efficiency. One of the six major recommendations of that committee was "the elimination of all non-fiscal functions from the Treasury Department." And there was recommendation by the same experts that prohibition enforcement be taken from the supervision of the Secretary of the Treasury.

Furthermore, as long ago as 1920, a Secretary of the Treasury, David F. Houston, specifically recommended in his annual report for that year that the Prohibition Unit should be taken from the Treasury Department. He said that the Treasury Department and its officials had enough to do to take care of the tremendous fiscal responsibilities growing out of the war. Also four years ago the Conference of Federal Circuit Judges, called

annually by Chief Justice Taft, recommended that responsibility for prohibition enforcement be transferred from the Treasury to the Justice Department.

But, regardless of what the experts say, critics want to know the "why" of the proposal to centralize prohibition enforcement authority in the Justice Department.

The "why" is that with responsibility divided as at present, there is no way for the President, Congress or the people to put a finger on the weak spots in enforcement. Even this discussion of mine, pointing out various weaknesses in enforcement efforts made so far, is bound to leave the reader with a hopeless feeling of, "Well, to whom can I look to drive out polities that is dominating United States attorneys' offices, to raise civil-service standards for agents, to compel coordination of border forces, to restrict alcohol permits and to improve regulations?"

And the answer now is, "A dozen different people." The result is constant evasion of responsibility and the passing of blame from one to another when a bad condition comes to light. The heads of the Prohibition Unit, Customs Service, and other investigative agencies, as well as the Department of Justice spend much of their time saying, in

effect, "It wasn't I, it was the other fellow who failed in his duty and let the bootleggers slip through."

No great additional sum of money is needed to improve prohibition enforcement. There is plenty of man-power, though not all of the right kind nor always made to work to the best advantage. For instance, there are six separate investigation units of the Treasury Department, besides one in the Post-Office Department, one in the Immigration Service and one in the Department of Justice. If they were made to work together in the right way, with the proper interchange of information and personnel, there would be more of the racketeer type of bootlegger caught and convicted: the man at the head of the big liquor rings.

In the Treasury Department itself, there is a scattering of responsibility that encourages "buck-passing" when anything goes wrong with prohibition enforcement. The Secretary of the Treasury necessarily must occupy most of his time with the financial affairs of the country. He is mainly concerned with problems of national and international finance, and prohibition is bound to be a subsidiary interest.

A necessary step in the solution of the enforcement problem is to secure the close grouping and proper coordination of the various evidence-collect-

ing branches of the Treasury Department with the prosecuting and evidence-collecting agencies under the Department of Justice. *There should be one head to determine policies.* Enforcement to be effective must succeed in the courts. Court prosecution is fixedly a responsibility of the Justice Department. Evidence-gathering agencies are flexible and can be moved. Consequently the logical place to center all prohibition responsibility is, as the Conference of Judges decided, under the Attorney General.

It is essential that bootleggers be cut off from their large supply of industrial, or specially denatured alcohol. Previously, I have stated in detail what the alcohol leak amounts to, and how it can be stopped by rewriting regulations and additionally restricting permits. Let me digress from my recommendations to show in another way that the alcohol leak is a big one and that it can be stopped. This additional proof lies in the work of Major Chester P. Mills, former Prohibition Administrator of the metropolitan district of New York, who resigned because political influence disrupted his force and thwarted his accomplishments. In presenting "the best and most practicable plan to make the Eighteenth Amendment effective," which won the \$25,000 Durant prize award, Major Mills said:

"In March, 1926, the withdrawal by such alcohol permit holders in the Second Federal District was 660,000 gallons of specially denatured alcohol a month. By increasing vigilance and supervision of the activities of these permittees, their number was materially decreased and this volume was reduced within a year to approximately 351,000 gallons a month, a reduction of 309,000 gallons a month, representing alcohol previously diverted into illegal channels."

When the alcohol leak is stopped there will be vastly less bootlegging throughout the nation.

Another recommendation for improving prohibition enforcement is to lessen the flow of liquor from Canada and other points outside the United States first by convincing Canadian authorities of the honest intention and integrity of our own officials, in order to secure more effective aid from Canada; second, by strengthening our border patrol.

There are now two patrol organizations which might be coordinated or consolidated. There is a border patrol operating under the Commissioner of Customs in the Treasury Department, composed of about seven hundred men. This service is disorganized and decentralized, operating in local units under the political domination of the various collectors of customs.

There is another unit under the Secretary of Labor known as the Immigration Border Patrol.

It consists of four hundred men and operates under the direct supervision of the Commissioner of Immigration. A consolidated Border Patrol, or one coordinated by a capable administrator familiar with the border liquor situation, and working with the Department of Justice, could center responsibility in trained leaders chosen from these two forces, and greatly lessen the smuggling of liquor into the United States.

The fifth step toward making prohibition enforcement effective is complete elimination of political appointees from the enforcement organization. As long as one-third of the prohibition force is made up of people who have not qualified under proper civil-service examinations, and political influence is instrumental in keeping dishonest, untrained or stupid men in the service, there will be little possibility of the kind of enforcement that is required. This will take presidential and congressional cooperation. It can not be accomplished by merely "ordering" that it be done. But patient and purposeful labor will show results.

Even the requirements of civil-service qualifications have not so far been wholly free from political influence. One man examined failed on the character test for obvious reasons. After a number of political forces, including a dry Senator,

had pleaded for him, he was reinstated and given a grade of more than ninety-five—one of the highest on record! The *first* grading was correct. Politics must be kept away from the Civil Service Commission, and standards for civil-service qualifications *materially* raised.

To local communities, as already demonstrated, must be left responsibility for the kind of police work that will detect and punish the half-pint and quart local liquor pedlers. The majority of federal prohibition agents can be men whose honesty and integrity and skill are amply vouched for and who have brains and judgment as well as special training for the collection of important legal evidence by means that will not endanger lives or outrage the legal rights of law-abiding citizens. It takes principally the "will to do it" by some one in authority to put such morale into the force.

No less important is the adherence to a policy of appointing United States district attorneys and their assistants on the basis of legal fitness, integrity, and willingness and determination to enforce laws, instead of on the basis of political influence. Such a policy is an ideal and a senator here and there can occasionally block it, but the President and Attorney General working to this end can make it ninety-five per cent. successful.

All these men, however, and many others, will have to be kept alive and faithful to their duty and responsibility, not alone by competent direction and supervision from Washington, but by alert and ever vigilant, organized public sentiment for law enforcement in local communities.

It can not be repeated too often that prohibition never will be successfully enforced from Washington alone. A plan of enforcement leaving out enlistment of the aid and cooperation of local sentiment of the country simply can not succeed. Washington can lead. I believe conferences from time to time with governors and state officials help, but education of the people to the need of local alertness is a vital part of any enforcement plan.

The difficulties encountered in directing from Washington the prosecution of an important liquor conspiracy case involving local officials at Mobile, Alabama, will illustrate this point. The United States District Attorney was a man who believed in prohibition enforcement, and was honest in his efforts. The liquor ring, however, secured his indictment by a state grand jury, and while that indictment (subsequently dismissed) was pending, we could not use him to prosecute the bootlegging ring. It was necessary, therefore, to secure the services of a special prosecutor.

We had the utmost difficulty in securing a competent lawyer, and one who could be depended upon to prosecute fearlessly and vigorously. We finally appointed a Democrat (which in a Republican administration is almost a capital offense!). Hugo Black, a young man of vigor and courage and subsequently elected senator from his state, was chosen. But many weeks were consumed in finding him, and then more time was consumed in arranging the details of compensation. All this time the lawless element benefited.

In the end, the special prosecutor was put at work, and the cases were carried to successful conclusion, with the conviction of a number of the conspirators, including local officials. But these incidents (and there are many more of a like nature) demonstrate the difficulty of "prosecuting from Washington." The responsibility for prohibition enforcement must be increasingly carried locally. The general direction only must be centralized, and responsibility for policies accurately fixed, in Washington.

The most important of the steps discussed in detail in these pages, to bring about improvement in prohibition enforcement, may be summarized thus:

I. Those which Require Legislative Action.

1. A law to transfer the Prohibition Unit and centralize responsibility in the Department of Justice, having also provision for the President to move units or divisions thereof to other departments in line with his reorganization plans. (Note: Such a flexibility clause is not unusual, and I believe after policies are established and regulations improved by the Attorney General, it will prove advisable to move the prohibition laboratories to the Commerce Department. They do not really belong in either Treasury or Justice Departments, but should not be unscrambled from their place with the Prohibition Unit until the Attorney General can complete his reorganization, and absorption of the unit.

2. Passage of the bill to organize a consolidated border patrol.

3. Amendment and strengthening of Section III of the National Prohibition Act to throw greater safeguards around the production and distribution of industrial alcohol.

II. Improvements by Administrative and Executive Action.

1. Rewriting, under the direction of the Attorney General, of regulations governing issuance, inspection and revocation of permits to use, manufacture, sell and transport alcohol and other liquors.

2. A careful scientific survey by the Department of Commerce of the amount of alcohol needed by legitimate industries of the country, and a limitation by the Prohibition Department of alcohol manufacturing permits to maximum quantities within such amount.

3. Continuing the system of coordination of border forces on both sides of the international line, started so successfully by Consul General Harris, to *all* points along our northern and southern boundaries.

4. Special attention by the President to enforcement conditions in Washington, and establishment of a quiet, effective, forceful policy to set the highest standards in city government. The United States District Attorney's office in Washington, as well as other offices, should be a model for the rest of the country.

5. Start zone conferences between state officials and the United States district attorneys and other important Department of Justice officials, to coordinate law enforcement efforts, exchange information, share responsibilities and prevent overlapping of activities.

6. Removal by the President of politically evasive United States marshals and district attorneys and those who patronize bootleg liquor—

and where senators for political reasons fail to recommend a well-qualified and vigorous man for the post, arrange for the judges to make an interim appointment, and thus keep the cases moving.

7. Start a quiet but real campaign of personal effort by the Attorney General himself to enlist the cooperation of United States district judges in improving juries, and raising the type and number of United States commissioners. (A part of this will be readjustment of their fees.)

8. Cooperation between the President, Attorney General and Civil Service Commission, to elevate civil-service standards for prohibition agents and provide increased opportunities for them to rise in the service.

III. Improvements by Citizen Action.

1. Study in colleges and by civic organizations of the present grave breakdown in city government, in an effort to devise a better system of elective control.

2. Re-emphasis by the united dry organizations in wide-spread and intensive educational campaigns of the scientific and personal value of prohibition, and their mobilization to secure and enforce city ordinances, and county and state laws, in support of the Eighteenth Amendment.

3. Periodical and local audits by civic associa-

tions with publication of facts on the conduct of public business by public officials.

I believe, based on my often disillusioning but illuminating experience with the liquor situation, that prohibition can be enforced, and *now*. I was born in Kansas on the western plains near the Panhandle of Texas. That strip of territory *was* literally, then, and was called "No Man's Land." It had not been brought under the authority of state law, and no law was enforced. It was a harbor for criminals. Just a few months before my birth, my father was almost killed and my uncle, serving with a sheriff's posse, was slain by a lawless band that swept over from that law defying area.

And so it seems to me that we now have throughout the country a psychological no man's land which is the refuge for the dregs of society: the bootleggers, the thugs, the potential murderers, the bribers, the grafters and criminals of every description who live by preying on honest men and women. We have not effectively organized against them. These lawless elements took full advantage of the disorganization of governmental agencies and the relaxed grip of local communities on sturdy and normal enforcement of law during the confused period following the World War. Various legal phases of the Eighteenth Amendment and the Vol-

stead Act, fraught with uncertainty and confusion, had to be tested in the courts until the points were settled. The force of prohibition agents created under the Volstead Act was untrained, incompetent and sometimes dishonest. All these things were circumstances the bootlegger was not slow to turn to his advantage. Liquor violators were therefore entrenched and in strong position for several years before enforcement activity was even fairly well organized. The bootleggers and their allies still have much of the initial advantage. But they can and will be routed! This is not blind optimism; it is common sense based on a knowledge of the character and strength of the American people, who will not surrender to confused thinking and the defeat psychology current on this subject.

If one person is given centralized authority to coordinate forces and establish policies, if he be willing to face the discouragements and the infinite details of the task, if he will stand up and take punishment, and keep fighting, he can carry the work on to success. He will need and he will have the backing of President Hoover, who has spent his life doing the things which timid men said were impossible.

APPENDIX

PROHIBITION ENTERS POLITICS

Speech of
Mabel Walker Willebrandt,
at
Springfield, Ohio,
September 7, 1928

I ACKNOWLEDGE with gratitude the invitation of this body representing so many leaders of the Methodist Church.

There is in Washington a statue of Francis Asbury, your first bishop. It is an equestrian figure standing in the city where many generals mounted upon charging war horses also stand. But there is this difference—Asbury does not carry a sword; he carries a Bible. His horse does not prance. He rather droops as if content to save his energy for getting on rather than expend it in style. So was Asbury's leadership; so have been his followers. The Word for a sword, quiet perseverance rather than prancing dress parade. But Asbury was a soldier and you, his followers, are soldiers as truly as were Cromwell's Ironsides. There is as great need for courage, steadfastness of purpose, clearness of vision, to-day

as when Asbury led your ancestors to the worship of God.

Your church has always been interested in conditions that make for the welfare of mankind. You and your congregations prayed and fought, argued and voted to bring prohibition, first in your communities and then in the states and nation at large. You worked first to develop through the leaven of religious teaching a *state of mind* that should value the welfare of the community above dangerous liberties of the individual. After you got that state of mind in enough people, it was not so hard to make your town or your county dry. Working for the state of mind was your hardest task. We know that was achieved very generally before the Eighteenth Amendment was ever proposed or passed, since out of 2,540 counties of the United States all but 305 had declared themselves dry. But nurturing the prohibition state of mind, which is essentially a spirit of social unselfishness, is still the hardest task.

The Eighteenth Amendment was passed not only by the required three-fourths of the states but by every one in the Union except two. Spotted throughout the nation, however, were many wilful sections where much of the local sentiment was against change in the Constitution. The worst of these spots was in New York City. The Empire State as a whole achieved the "will to unselfishness" which ratification of the Eighteenth Amendment typifies. But Manhattan is ruled by Tammany, an organization that for underworld connections and political efficiency is matched no place else in America.

Scattered over the United States were members of the intelligentsia, who organized the Association against the Prohibition Amendment. They worked along more or less futilely through 1921, '22 and '23. In 1924 at the Democratic Convention in Madison Square Garden, Tammany tried to capture the Democratic party.

Tammany didn't then realize that it could not sweep that party off its feet by typical Tammany methods. Screaming whistles and brass bands failed to win southern leaders. Tammany's candidate was the man who had just abandoned the policy of cooperation between State and National Government, provided for in the concurrent clause of the Eighteenth Amendment. He was the one Governor in all the American states who, notwithstanding his oath to support the Constitution of the United States, pulled down one of the forty-six pillars the people had erected for its support. New York had ratified the Amendment. That ratification was a pledge to concurrent effort. But the audacious Governor was unconvinced by such reasoning. Tammany wanted the least possible prohibition. Tammany had reared him; gave him his power. Tammany's desires were his convictions.

Certain leaders in the Association against the Prohibition Amendment saw the importance of securing as spokesman of their cause so powerful a leader as the Governor of New York. Thus the wealthy groups of Anti-prohibitionists and Tammany—symbol of predatory politics—and Governor Smith were found in early alliance.

They have prepared well for this critical hour. Newspapers in rural and southern communities were bought by New York money and have switched from a long settled, dry policy to preaching the doctrine of "It can't be enforced." At the same time there have been insinuated into strategic positions in dry enforcement men who were members of the Association against the Prohibition Amendment. They have left office proclaiming from the lecture platform and through the press one general chorus that "Prohibition can never be enforced."

Others announce that its enforcement will invade every man's home, will drag him unwillingly to testify, and will unduly harass even the law-abiding. Thus has there been created a state of mind of irritation with and confusion over all the government's efforts at prohibition, however orderly and regular they may be.

Anti-prohibitionists have never won against *united drys*. It is clever strategy, therefore, to divide their forces. *That is what is attempted in making prohibition a party issue.* *Thousands of organizations committed to prohibition BUT TABOOING POLITICAL DISCUSSIONS FROM THEIR PLATFORMS, now face the necessity of defending prohibition in the field of partisan politics.* *Your organization is such a one.* You and thousands of others fought for and secured this national policy. You did not make it a political issue. Your adroit Tammany foe has done so. You can do nothing else but follow wherever defense of the Eighteenth Amendment leads.

It is not abandoning your non-partisan policy of not

discussing politics or letting your organization be torn by political dissensions to take a stand against the Democratic nominee and for the Republican national ticket this year. In fact, there is no choice. The Republican party platform and both its candidates are, by declaration and record, committed to the principle and the enforcement of prohibition. Whereas the Governor of New York, with characteristic Tammany ruthlessness, after his nomination was quite safe, repudiated the dry plank in his party's platform.

He proposes that the Eighteenth Amendment to the Constitution shall be altered so as to "give each individual state the right wholly within its borders to import, manufacture or cause to be manufactured, and sell alcoholic beverages, the sale to be made only by the state itself and not for consumption in any public place." He makes this astonishing concession to lawbreakers in the name of "a great moral issue involving the righteousness of our national conduct and the protection of our children's morals."

It is a curious thing that during the entire history of this nation down to the adoption of the Eighteenth Amendment, when any state might have done so, just one state tried the experiment of selling whisky. It was South Carolina. In 1892 the then Governor Bill Tillman—afterward United States Senator—proposed such a scheme. It was adopted and continued with varying modifications down to 1915, when it was abandoned and state-wide prohibition substituted.

The scheme was a failure. There was corruption. There was drunkenness. There was not a saloon, it is true. There were dispensaries where people bought whisky by the bottle—the original package—and took it into the back alleys to drink. In this faster age they would take it into automobiles.

Democratic apologists insist that electing a wet President would make no difference in the United States. It is true that he would not have power to accomplish the plan that has been proposed. A dry Congress would prevent that. He could not give liquor to this nation legally; but under him liquor would be easier to get illegally. The inevitable result of his leadership would increase disregard for law, evasion of responsibility of enforcement, and enlarge avenues of nullification of the Constitution. And no dry Congress could prevent that, and honest anti-prohibitionists don't want liquor at that price.

But it is pointed out that he promises to enforce the prohibition laws vigorously as long as they remain unchanged. That promise, however well intentioned, is itself a ridiculous impossibility. When were battles ever won by appointing as commander-in-chief a man denouncing the very cause for which the war is being waged and openly denouncing the tactics of war? If we learned nothing else out of the Great War, we learned the value of morale. Nowhere is it more apparent than in this huge but delicate organization of the Federal Government. Every one admits—Republican and Democrat

alike—the splendid effect of the conscientious practises of obedience to law by President Coolidge. Likewise the election of a President openly disavowing his belief in the prohibition law and openly announcing the use of his leadership to change the Constitution in such a way as to permit the distribution of liquors would shatter the courage and morale of the agencies of enforcement.

What prohibition agents would risk their lives in enforcing the Eighteenth Amendment for such a national leader? Over seven hundred and fifty agents have been killed or maimed in line of duty by gangsters furnishing liquor to the socially selfish who insist upon having it at any cost.

The President selects and appoints a vast army of officers whose state of mind is of chief importance in securing enforcement of the prohibition laws. He appoints two Cabinet officers directly and personally responsible for it—the Secretary of the Treasury and the Attorney General of the United States. He appoints at least four assistant Cabinet officers who share these responsibilities. He appoints ninety-one United States district attorneys to supervise the prosecution of prohibition laws in the federal courts, and they each appoint from five to fifty assistants. Would these men brave ridicule from the wet papers and make political enemies to enforce vigorously a law that their commander-in-chief was actively working to remove? In the loss of morale of United States attorneys and their assistants, prohibition enforcement could be wholly defeated by letting

cases die before they ever reach the courts. And dry members of Congress could not prevent that. The President appoints ninety-one United States marshals who, with hundreds of deputies, serve papers and make the arrests. The possibility of tip-offs and evasions of duty is very great even when the highest morale is preserved; enforcement is almost completely checkmated when the morale of the United States marshals' office drops. The President appoints all federal judges. The federal judge who disbelieves in the law and who uses the prestige of his office to express his private opinions freely on the demerits of the law that he is enforcing contributes greatly to lawlessness in his community. We have had a few federal judges who harangue agents in open court and who yield to their temptation to express disgust and impatience when improperly prepared cases are brought before them. The tendency to do all these things which give such aid and comfort to the bootlegger and spread the spirit of lawlessness, would be bound to be increased if the Chief Executive was himself engaged in public criticism of the law and the Constitution.

The President recommends appropriations to Congress for enforcement of prohibition, and it would be unnatural for a President opposed to the law to sign large appropriation bills to carry it into effect. Finally, and most important of all, the President can place responsibility upon all agencies of the Federal Government for doing their share and intercorrelating their efforts to discharge the responsibility of this difficult task of ex-

forcement. The natural tendency of all of them is to do as little as possible within the boxed-up limits of their respective assignments. A President leading the legal revolt against the law could not get very far in securing harmony of effort between antagonistic units and in instilling a spirit of cooperation in enforcing this law.

It is reasonable to assume that the Governor's oath promising to "support the Constitution of the United States," binds him to assist in the letter and spirit of enforcement of the Federal Constitution. But New York, since through Governor Smith's leadership the enforcement act of the state was repealed, has become the center, not only of lawlessness and disregard for the Constitution of the United States and free and open distribution of liquor, but it has also become the center of the dissemination of the false doctrine that the law can't be enforced. That statement could be received with more conviction if it emanated from a state where Federal Government and State had joined hands and worked valiantly to do the job. In New York State there are between two thousand and three thousand state police; there are more than sixteen thousand city police; there are one hundred and thirteen Supreme Court state judges and sixty-two county prosecutors. All of these agencies might be enlisted to reduce the crime and lawlessness that is alleged to flow from disregard of the prohibition law, but they are now and have been inactive as to prohibition since New York State repealed its enforcement act. As a consequence, bootlegging has vastly

increased; liquor running over the Canadian border has multiplied; blind pigs that used to operate secretly and with some degree of shame operate openly with bars and brass rails; hundreds of night clubs in Manhattan are just a new form of the old-fashioned saloons that Tammany used to protect. These night clubs have open bars, and yet they can exist only as long as they can get licenses from the city administration. Of course the law is not being enforced in New York; it is being evaded and nullified; a few hundred federal agents and thirteen federal judges with four United States attorneys, can not alone cope successfully with so much lawlessness. But that does not prove the Eighteenth Amendment should be abandoned. The Governor, under whom nullification and evasion have become the state policy, can hardly make such argument convincingly.

If President Lincoln were here to-day, he would answer Governor Smith, who has paralyzed his own state agencies from assisting the Federal Government in enforcing the Constitution, just as he answered the adroit political argument of Douglas in their famous debate at Jonesboro, Illinois, September 15, 1858, saying:

“What do you understand by supporting the Constitution of a State or of the United States? Is it not to give such constitutional helps to the rights established by that Constitution as may be *practically needed*? There can be nothing in the words ‘support the Constitution’ if you may run counter to it by refusing support to any right established under the Constitution.”

What would Governor Smith say in answer to Abraham Lincoln's searching question addressed to Douglas October 13, 1858, at Quincy, Illinois:

"If you *withhold* that necessary legislation for the support of the Constitution and constitutional rights, do you not commit perjury? I ask every sensible man if that is not so? That is undoubtedly just so, say what you please."

Any citizen has an absolute legal right to work for the repeal of the Eighteenth Amendment. Any group of citizens have the unquestioned right to band together and spend money in a union of effort to accomplish that end. It is, however, a matter of grave doubt whether it be proper under our Constitution for the President of the United States to become the champion of any one faction for the change of the Constitution. It is significant that when our Constitution was drawn, the oath which the President is obliged to take was made different and broader than the oath exacted of other federal and state officers. The President must swear to "preserve, protect and defend" the Constitution. "Preserve, protect and defend" are strong words to outline the presidential duty. It would seem that if he chooses to be President of the United States, that oath makes him take the Constitution the way it is when he enters into office. He becomes the champion of that document and all it means. He is to resist any effort to change it by other than constitutional methods. Groups of citizens have a right to work for its

change, but the President is like the chairman of a meeting. He is to remain neutral, not the champion and the spokesman of a minority group working for an amendment.

Another reason that it would appear that the President of the United States during his term of office is to remain the champion of the Constitution as he takes it, rather than the advocate of a change, is that in defining his duties the Constitution gives him no part or influence in the various steps of amending the Constitution. The President is obliged from time to time to recommend to Congress "measures" that seem to him necessary for the welfare of the country. A constitutional change is not a measure; it starts by resolution which when passed is referred to the sovereign states, and when three-fourths of them have ratified the proposed constitutional amendment it becomes effective. Unlike a measure or a law, the President does not sign it and is powerless to oppose it. It is therefore doubtful if a President can, without violating the very spirit of his oath established by the founders of the Constitution itself, engage in using the force and power of his office while he is President of the United States, to effect a constitutional change.

Prohibition can be enforced. Not by left-handed efforts. Not by tinkering with the Constitution. Not by wasting time juggling percentages in the Volstead Act. But by intelligent, courageous, systematic, consecrated leadership from the Chief Executive of the nation. You can have such leadership from Herbert Hoover. He be-

lieves in the Constitution. He obeys it. No bootlegger has access to his pantry or his councils. He is not a bigot. He is intolerant only of intolerance. He concedes all men the right of different convictions. But he concedes no man the right of evasion or nullification of either the letter or spirit of the Constitution or our laws. He is an engineer. He believes in constructive effort and success. He never compromises with "the impossible." He meets and conquers it. Enforcement of the Eighteenth Amendment is a vast job in legal and human engineering. There are forty-eight states, forty-six of which have adopted it, thereby pledging concurrent exercise of their police power to accomplish its observance. The machinery for enforcement of each must be inventoried and brought into gear with the Federal Government. Waste and false motion in the latter can be eliminated. No more money is needed. There is plenty of man-power. Six separate investigating units of the Treasury Department, one in the Post Office, one in the Immigration, and one in the Department of Justice can be coordinated and intercorrelated. Prosecutors in State and Federal Governments can be brought into closer relationship. Careful training of agents and wise and early legal guidance will prevent the escape of law-breakers through technical errors, and save the community the annoyance of an untrained agent's blunders.

State by state the causes of crime, sources of supply of liquor and places of greatest lawlessness must be surveyed, results analyzed and remedial steps fearlessly

applied. It is fundamentally a question of leadership and developing a will to win. No citadel ever was taken by a general who said it could not be done. The enforcement of this act must be in the hands of those who believe in it—wish it to succeed—who will work vigorously and constructively to that end—that now can only mean in this election the hands of Hoover.

Preach that message. Rouse your communities. *The issue is bigger than party lines.* Hoover is a partisan, but far more too. Having touched far horizons with healing hands, he has become a citizen of the world. He lives spiritual consecration in public office.

There are two thousand pastors here. You have in your churches more than six hundred thousand members of the Methodist Church in Ohio alone. That is enough to swing the election. The six hundred thousand have friends in other states. Write to them. Every day and every ounce of your energy are needed to rouse the friends of prohibition to register and vote.

The Eighteenth Amendment is now in politics. You did not put it there. The Republican party did not put it there. Neither did the rank and file of the loyal constitutional Democrats. Neither did the National Democratic Convention put it there. It was put there by its enemies; and Governor Smith, by a formal act as ruthless as was ever recorded in American politics, became their leader. You whose labors and whose prayers accomplished it as the constitutional policy of this nation, will follow it to the political arena where Tammany has dragged it. The

forces against prohibition have never been able to prevail against the united strength of Republican and Democratic drys. They can not do so now, for you will not only remain united, but recruit your ranks by thousands who are now voters or those who, under the normal issues of the average election, would not come out to vote. You have a chance to defeat the anti-prohibition forces so badly the question of repeal will be laid to rest for ever. You have a chance to prove to the politician that he can no longer gamble with this issue, that he must accept the Amendment as an obligation. You have a chance to prove by electing Herbert Hoover that obedience to law can be secured and that America does not retreat before organized crime.

PROHIBITION THREATENED

Speech by
Mabel Walker Willebrandt
at
Lorain, Ohio,
September 23, 1928

FOR fifty years you of the Methodist and other churches have opened your pulpits to the discussion of the prohibition question to show up its enemies and advance its friends. You have impartially supported Democrat and Republican for legislative halls or executive or judicial office. You have never asked a man's church or his party if his acts and utterances were against liquor. You have supported Jews and Catholics and men of no church if they were aggressive against the saloon. All these years the extermination of the liquor traffic has been for you solely a moral issue—never political. Fundamentally, it is not political now and never can be. It is moral and economic.

But—prohibition *is* now in politics. Tammany's candidate for the presidency of the United States, in defiance of the large dry sentiment of his own party, has dragged it into politics. He has flung the challenge to all who want to restore the liquor traffic to vote for him.

Friends of prohibition and those who worked to bring about the Eighteenth Amendment are in almost equal numbers in each political party. Making prohibition, therefore, a party issue was an adroit political trick to split the dry forces along sectional, geographical and party lines.

But you didn't split. You accepted his challenge. You are standing together to fight the candidate who declared war on you.

Thirty-one national organizations in the United States were joined to advance prohibition. They represent several boards and committees of the Methodist Church, together with branches of Baptists, Presbyterians, Christians, Unitarians, Congregationalists, Quakers, and two influential groups of the Catholic Church, one of the priesthood, and the other an organization of individual Catholics. All of these groups with deep moral conviction, have prayed for, worked for, given for, and voted for prohibition. Their labors have not been denominational. The whole thirty-one united against the Democratic nominee and have met twice in Washington, issuing the following militant statement:

"His [Smith's] whole record is public life has been consistent as the servant of the saloon and the liquor traffic interests and the most corrupt political organization in the history of the Republic—Tammany Hall. His election would, in our judgment, be the greatest victory for the saloon and liquor traffic since the foundation of the Republic.

"We call upon all men and women of this nation who

believe in the integrity of the Constitution of the United States to defeat Alfred E. Smith at the polls in November."

Following that, your conference of Methodist ministers and laymen has officially denounced this candidate because of his threat to prohibition, and have recommended the informing and arousing of your community to the need of registering, working and voting to defeat him. You will swing the election in many states. The anti-prohibitionists and Smith defenders charge that therefore your church has gone into politics. The wet press and some who do not know all the facts have assailed you for denominationalism. But you have truthfully replied:

"The Eighteenth Amendment is our spiritual and moral achievement. We are only defending it from a Tammany politician's unwarranted attack. If that be politics, then make the most of it!"

I respect your courage and convictions. I am profoundly convinced that Tammany's candidate justly faces his Waterloo from the moral forces of this nation, whom he unreasonably and unnecessarily challenged, in his telegram to Houston.

Can it be that Governor Smith thought that you who have given of your prayers and sacrifice for prohibition would permit it to be dragged from its non-partizan surroundings into the arena of partizan politics and assaulted and you not follow to defend? Did the "Happy Warrior," engaged in calling his anti-prohibition braves

about him for a war-dance over the Eighteenth Amendment, actually think you pastors who have always defended prohibition from your pulpits could be lightly waved back with the admonition to keep away from worldly things? Isaiah, Jeremiah and Paul were denounced as political preachers, too, because they had the daring and the courage to come out against the rulers.

Your church isn't going into politics. It maintains, as it has during all the years of struggle, that prohibition does not belong in politics, that it is a moral issue. But the political trick to divide you or deter you from protecting the Eighteenth Amendment did not work. Governor Smith at Oklahoma City last week said quite truly that voters should carefully consider the "ability of the candidate to make his party's platform effective." You did just that. The Democratic party put a dry plank in its platform. The Democratic candidate bored bung-holes in it with his telegram of acceptance. *He invited your opposition. You are giving it to him more concertedly and intelligently than he likes.*

Governor Smith has personally charged that I opposed him because he is a Catholic when I spoke at Springfield, Ohio, to another conference of Methodists. When Governor Smith says that, he is hiding behind his own church because he is afraid to come out and face the record that he has made as a champion of the liquor traffic.

Prohibition is a moral issue which churches have long espoused. It was he who injected this moral issue into

the campaign. It was therefore his act that drew the churches into this campaign.

The Methodist Conference to which I last spoke had already passed a resolution condemning Governor Smith for his prohibition stand. But if Senator Thomas J. Walsh, of Montana, or any other law-abiding Constitution-respecting Catholic Democrat were the Democratic candidate, neither the Methodist ministers nor the ministers of any other church interested in the moral issue of prohibition, would have taken a partisan stand, and my speech would not have been made.

As an officer of the government I have been engaged for seven years in defending the Constitution of the United States against nullification and attack. Governor Smith has become the greatest force for disregard of the prohibition laws in America to-day. As such he draws my opposition. Religion has nothing to do with my attack upon him, or the attack of the dry forces. We condemn him for his own record, acts and utterances. These make him wince. So he seeks to shield himself and his record behind a religious issue—an issue which he, himself, raises unfairly in this campaign. Mr. Smith forgets that he has stirred up a great moral issue in which many eminent Catholics are arrayed with Protestants.

Your campaign against Governor Smith is not because he is a Catholic. That is a “wolf-wolf” cry raised to cover up the fact that he is unwilling to meet you on the grounds of your actual opposition to him, to wit: his long legislative record of championship of the saloon, his

Tammany training, his refusal of state cooperation with the Federal Government in enforcing the Eighteenth Amendment, and the illogic of his using the lawlessness thereby resulting in his state as an argument against prohibition; these things, all topped off by the Houston telegram. These are the real reasons you and the thirty-one national organizations oppose him.

Denominationalism has been lost in common defense of the Eighteenth Amendment. You Methodists in opposition to Smith are standing beside the Association of Catholics favoring prohibition, headed by Colonel P. H. Callahan, of Louisville, Kentucky, the Catholic Clergy Prohibition League, and leaders in the Catholic Total Abstinence Society.

The Right Reverend Monsignor James E. Cassidy, pastor of St. Patrick's Roman Catholic Church at Fall River, Massachusetts, views the results of the Eighteenth Amendment quite differently from Governor Smith. Quoting him:

"The extinction of the saloon by prohibition in the circles in which I move, with the people with whom I daily deal for soul and body has been a blessing and a benediction that no lover of truth, no lover of humanity, no lover of souls, would knowingly attempt to deny, decry or diminish. . . . Misery, wretchedness and wrangling have given way to peace, contentment and self-respect."

Prohibition has not failed of enforcement, nor have the rank and file of the American people abandoned obedience to it during this and the past administration.

There are more of the average American people who will vote in this coming election, who live the same kind of lives that President Coolidge does in regard to unostentatious and conscientious obedience to law, than there are of those who demand their liquor and get it in defiance of law.

In such cities as New York conditions of observance of the prohibition law are by no means satisfactory, because of the repeal of the state enforcement laws under Governor Smith, but Governor Smith's proposal will satisfy no one nor will it soon bring back the saloon. If the steps so far taken toward law enforcement have brought about nothing more than the closing of the open saloon, the routing of Rum Row, the elimination of the old drunks from our gutters, and the liquor-bred poverty which the Salvation Army and the Survey of the National Federation of Settlements show has gone, it has justified itself to such an extent that no thoughtful leader can safely propose to the American people the abandonment of effort to secure further observance of the law.

Let there be no delusion over the idea advanced by drys who seek to remain true to their Democratic party at the cost of what its candidate will do to prohibition, that "conditions would be about the same under a wet president as under a dry." The very effect of his leadership and the normal exercise of his appointing power would demoralize enforcement and multiply lawlessness.

Mr. Smith as Governor of New York has four times taken an oath to support the Constitution of the United

States, and he has four times disregarded that oath. He now says if he is permitted to take it the fifth time he will this time obey it. I say much louder than a whisper that the drys doubt it!

IT CAN'T BE DONE

Speech by
Mabel Walker Willebrandt
at the
Annual Shore Dinner
of the
Westminster Men's Club
At Warren, Ohio,
September 24, 1928

THE stationery stores of the country sell post-cards with the legend "IT CAN'T BE DONE," excepting that the letter *t* in "CAN'T" has been crossed with a red line. Although the card is a flippant one, it truly reflects the state of mind of the American people. The thought that there is anything they, through their government, can not do is obnoxious. Because of that state of mind America has produced inventions the full significance of which has not even been approximated. Through sheer will power and the unwillingness to admit defeat—the unwillingness to admit that "IT CAN'T BE DONE,"—America, and the world in general, has been made a better place to live in. An example is the development of the automobile industry and particularly the part that has been played by Ford and General Motors.

We are now faced with the astonishing spectacle of some of the leaders in American industry trying to make the American people believe that "IT CAN BE DONE" only when we are concerned with the material things of life, but—that when it comes to a question of good government—that when it comes to a question of decent living—that when it comes to a question of obeying the law—that when it comes to a question of abolishing the bootlegger and the speakeasy—that when it comes to a question of making the law of the land paramount to the vice element of the community, that "IT CAN'T BE DONE."

There are, of course, many who do not believe that the prohibition law is a good one. There are those who sincerely believe that the Eighteenth Amendment should be repealed. It may be conceded that they are now in the minority, just as the prohibitionists were once in the minority. The right to diverse views on this subject is undoubted. Such divergence of views is not only proper but is wholesome, since it focuses the attention of the nation on the different aspects of the question. But when any considerable number of the American people, and especially when some leaders industrially and politically press upon the public the thought—the state of mind—that they, the American people, are incapable of enforcing the prohibition law, or any law, then such leaders are inflicting upon the American people a wound and a hurt beyond the power of such leaders to calculate.

So far we have rapidly grown in power, in wealth, in culture and spirituality. Whenever we get to the point

that we really believe of any national job nobly and honestly undertaken, that "IT CAN'T BE DONE," we will have reached the apex of America's achievement. That is why there has been such a tremendous recoil against Governor Smith's policy of retreat on prohibition. This retreat and effort to restore the beverage liquor traffic is in line with his years of Tammany training. Tammany always protected the saloon.

One serious reason for opposition to the Democratic nominee is his Tammany connections. A man's horizon is always limited by his contacts and the persons whom he serves and the enterprises he undertakes. So the average thoughtful voter will look at the experience of the two men, one of whom will guide the nation for the next four years. All honor to a man born humbly, whether it be in the tenements of New York or near a blacksmith forge in Iowa. Humble beginnings are laudable, and no man has a choice as to where that beginning will be; but the test when men submit themselves for the highest public office in this land is whether they have enlarged the horizon that may have surrounded early life. Those who oppose Governor Smith believe he has not done so but has used the forces of Tammany and the underworld as stepping-stones, with the inevitable political obligations thereby imposed.

We observe much effort to apologize for Tammany and point out that it has now reformed and is engaged largely in charitable enterprises. In fact, the managers of the Smith campaign have put forth an official docu-

ment dealing in a delicate and rarefied way with Tammany and pointing out that organization's service to the South in reconstruction days. If what Tammany did to the South in the late 'sixties has any bearing on this campaign, why is it not relevant to point out the eighty-one million dollars stolen in two years and eight months (see *Encyclopedia Britannica*, Eleventh Edition, Vol. 26, pages 391 and 392) from the citizens of New York by Tammany during the Tweed, Croker and Murphy period?

In fact, speaking of this reformation, I noticed that on September 18, 1928, the *New York Times* reported a speech made by a prominent southern Senator head-lined "Smith Uplifts Tammany." A significant sentence is:

"Since the Happy Warrior became an influence in the Tammany organization . . . it has become daily more respectable as well as more powerful."

We have heard a great many surprising things about the Governor of New York since he became a candidate for President but this puts him in a new rôle.

I would not for the world wish to do Tammany an injustice or disparage Governor Smith's undoubted talents, so in picturing just how big a task he has undertaken when he becomes the uplifter of Tammany, let us refer to no partisan report. A paragraph in the *Encyclopedia Britannica*, Eleventh Edition, Vol. 26, p. 392, after describing various gangs of bribers and bosses that have ruled Tammany, says:

"The grosser forms of corruption that prevailed under Tweed did not as a rule prevail in later years. Instead, the money raised by and for the Hall and its leaders has come from the blackmailing of corporations, which find it easier to buy peace than to fight for their rights; from corporations which desire concessions from the city, or which do not wish to be interfered with in encroachments on public rights; from liquor-dealers, whose licenses are more or less at the mercy of an unscrupulous party in power; from other dealers, especially in the poorer parts of the city, whose business can be hampered by the police; from office-holders and candidates for office; and, lastly, indirectly through corrupt police officials, from the criminal classes and gambling establishments in return for non-intervention on the part of the police."

Of course Tammany's Governor may be equal to the task of reforming Tammany, but I want to say far above a whisper that I doubt it!

There is no need for discouragement. The Eighteenth Amendment, with all its high purpose, is safe with Herbert Hoover. He believes in it. He has no handicaps of Tammany associates or obligations. He has the training and experience to tackle it. He sees it in terms of its economic advantage, in terms of its protection of home life and of childhood, in terms of patriotic and unselfish sacrifice. He sees it in terms of observance of law more than enforcement of law. After all, is making the Amendment effective a bigger job than feeding Europe? It is not bigger than any one of many of his administrative achievements. The core of the task is leadership to lift our national morale to give the law a fair

chance. Food won the war; but it meant getting loyalty and cooperation from every kitchen. A great administrator in whom all had confidence did that. This same administrator can instil confidence in the Constitution and give new meaning to law observance. Do you remember meatless days? So, too, we can have cocktail-less parties. You say that was war-time sacrifice, and the average citizen won't sacrifice his desires in peace times. Of course, peace patriotism is harder, but it is not impossible. Respect for the government and its Constitution is the patriotism of peace. Herbert Hoover carries no timidity of defeat in his heart; he has the amazing spiritual leadership to make each law-abiding household want to do its bit. Governor Smith says it can't be done. With Herbert Hoover we know *it can be done!*

ANSWERING THE CHARGE OF BIGOTRY

Address of
Mabel Walker Willebrandt
Assistant Attorney General of the United States
At Hardinsburg, Kentucky, October 8, 1928

I ENJOY your welcome to Kentucky, this state we learned in childhood to regard as the home of brave men and fair women. I have already had evidence of the intellectual honesty and chivalry of one of your citizens of Louisville. I was attacked by the Democratic candidate because at a meeting sponsored by Methodists I spoke against his liquor proposals. He insinuated my appeal was because of his religion. He made an accusation entirely unfounded. It could only have been designed to confuse people who had not read my speech and to make them think I had said something I did not say. He spoke over a national radio hook-up, and I have no such means of reply. I know it was not Governor Smith's religion that prompted this unsportsmanly attack.

And so to-day I am touched and gratified that one of your Kentucky gentlemen steps forward to defend my intellectual honor. This gentleman is P. H. Callahan, a nationally known business man and distinguished leader

in the Catholic Church. He directed the war activities of the Knights of Columbus. Prior to that for three years—from 1915 to 1917—he was chairman of the Commission on Religious Prejudice. He made exhaustive studies and held hearings in many parts of the United States. From him I have had the following letter:

ASSOCIATION OF CATHOLICS FAVORING PROHIBITION

(Organized in Indianapolis, Indiana, in 1916)

Office of the Secretary,
1400 Maple Street,
Louisville, Ky.,
October 4, 1928.

“Mrs. Mabel Walker Willebrandt,
Assistant Attorney General,
Washington, D. C.

“Dear Mrs. Willebrandt:

“Referring to our conversation regarding your speeches in Northern Ohio.

“I have now read these speeches very carefully and I cannot find where you had any criticism whatever of the Catholic Church or refer to the religion of the Democratic candidate or his campaign manager.

“I know from intimate acquaintance that the Methodist Church has been fighting liquor and the liquor people for a generation or two, until now Prohibition is as much of an institution to the Methodists as the Parochial Schools are to the Catholics. It is very easy for me to imagine that if there was a candidate for President making a fight against the Parochial Schools which mean so much to the Catholic Church that it would be in order for any speaker before a Catholic conference to urge the defeat of such a candidate.

“There are so many anti-Prohibitionists who seem never to realize that we are earnestly and honestly en-

gaged in a movement to do something for the future generations.

"Our Association, however, have had no meeting and took no action as to the Presidential Candidates.

"In this latter matter you were evidently misinformed."

"Yours very truly,

"(Signed) P. H. CALLAHAN."

"PHC:OK"

Mr. Callahan as a prominent Catholic favoring prohibition does not stand alone in his church. It has been championed by some of the greatest spiritual leaders of half a century. An Irish priest, Father Mathew, in the middle of the last century, was one of the first leaders in the movement which culminated in the Eighteenth Amendment. Cardinal Mercier, Pius X, and the Archbishop of Ireland, were all advocates of prohibition. For instance, note the following words from the great Cardinal Mercier, one of the most dramatic figures in a thousand years of church history:

"Universal prohibition would save more lives than universal disarmament. Alcohol has killed more men than war, and has done it more dishonorably."

Governor Smith failed to realize the extent of passionate devotion dozens of organizations comprising hundreds of thousands of people throughout the United States have given to the cause of prohibition. When he attacked the Eighteenth Amendment, he stirred up among them such a recoil that his plight is like that of a boy

who has overturned a hornet's nest. May it be said to Mr. Smith's everlasting credit that he does not run from opposition; but he does resort to the well-known Tammany methods of deflecting the public attention from the real point and arousing prejudice. In this case he is doing the unfair thing to his own church by trying to hide behind it, and make it appear that all of those who oppose him for just causes are really striking at his church. I, for one, resent the suggestion that the daily swelling tide of opposition to Mr. Smith may be classed as an anti-Catholic vote. Such a suggestion from him is an injustice to his church and the American people alike. This opposition is gathering because of Governor Smith's stand on immigration, his Tammany allegiance and his attack upon the Eighteenth Amendment.

POLITICS AND INTOLERANCE

Speech of
Mabel Walker Willebrandt
at
Los Angeles, California,
November 3, 1928

IT IS stirring to any one to come home—it is particularly so to me on this occasion. I am grateful for your welcome—for the confidence California and California public officials and citizens have always expressed in me.

California is on the eve of her greatest triumph—giving to the United States a President ably qualified and finely trained.

As a daughter of California and as a citizen with the conviction that the welfare of our nation rests with the election of Herbert Hoover, I have contributed my bit with all the rest of you to secure an overwhelming vote November sixth.

At this time with prosperity at the high level to which President Coolidge's leadership has brought it, with the opportunity of advancing world peace, with a definitely difficult economic problem in the form of farm relief to be solved, and with the challenge that lawbreakers in

many parts of the country are flinging to orderly government, it is my conviction that it would be nothing short of disastrous for this nation to elevate to the Presidency of the United States a Tammany-trained politician with his Tammany connections proudly acknowledged, who has had no international experience, who has had no contacts with that vast section of our country west of the Mississippi River, who as Governor of the Empire State, has never been able to win the agricultural counties of his home state, and who, for the political effect of winning the support of anti-prohibitionists in both parties, made a false political gesture in the form of an assault on one part of the Constitution of the United States. I am convinced that the inevitable result of his leadership would be destruction of our national prosperity and unprecedented increase in lawlessness.

No other grounds of opposition to the Governor of New York have ever been expressed by me, but these have been made and amply illustrated from my many years of experience with lawless conditions that have grown up in New York during Mr. Smith's governorship.

Governor Smith has never answered me on any of these grounds. On the contrary, he resorted to the well-known Tammany method of deflecting the public attention from the real point, and is trying to arouse prejudice against his opponent. He insinuated my campaign was because of his church. He made an accusation entirely unfounded. It could only have been designed to confuse people who had not read my speech and to make them

think I had said something I did not say. He spoke over a national radio hook-up and I have had no such means for a reply, but I know it was not Governor Smith's religion that prompted his unsportsmanly attack. I know it because such illustrious Catholics as Joseph Scott, of this city, rose to my support, as did also P. H. Callahan, of Louisville, Kentucky, the director of the war activities of the Knights of Columbus, and many others. They have pointed out an evident truth that Governor Smith, imbued by New York psychology, did not realize—the passionate devotion dozens of organizations, comprising millions of people throughout the United States, give to the Eighteenth Amendment.

When he attacked the Eighteenth Amendment, and when his campaign manager referred to prohibition as a "damnable infliction" such recoil has been stirred up that the Governor resorted to tactics essentially unfair to his own church by trying to hide behind it and make it appear that the millions of people who oppose him for justifiable causes are really striking at his church.

I, for one, resent the suggestion that the swelling tide of opposition to Mr. Smith can be classed as an anti-Catholic vote. Such a suggestion coming from him is an injustice to his church and the American people alike, and it is cheap political tactics worthy only of Tammany to hurl the epithet of "bigot" at every opponent.

In what marvelous contrast stand forth the campaign and conduct and utterances of Herbert Hoover.

Intolerance and bigotry are the sins of ignorance.

We hate what we do not understand. And the only remedy is charity and truth.

Roman Catholics, Methodists, Episcopilians and Lutherans all use the Nicene Creed. It is the very foundation of their religions. Not realizing this they often hate one another in the name of Him who said, "A new commandment I give unto you, that ye love one another; as I have loved you, that ye also love one another."

Christianity without love is a mockery of Christianity—a barbarous ritualism. It is not the joyful unselfishness of St. Francis of Assissi and John Wesley. It is the Christianity of Ivanhoe that glorified a dumb Rowena and persecuted a glorious Rebecca. It is no Christianity at all.

"Though I speak with the tongues of men and of angels, and have not love, I am become as sounding brass, or a tinkling cymbal."

In the World War ten millions died in battle. And twenty millions more from starvation, torture and disease. This in the name of the Prince of Peace. This in the name of Christianity. Be you pope or peasant, prince or peon, without love in your heart you're no Christian.

"Though I have all faith, so that I could remove mountains, and have not love, I am nothing."

The Sermon on the Mount may yet give us the spirit of united Christendom. But the Christianity of mere creeds and ceremonials, after whatever church name, is dying from its very lack of love. It has filled the world

with hate and bathed the world in blood. And nothing but love can ever revive it.

"Though I give my body to be burned, and have not love, it profiteth me nothing."

Until the past few years America has been particularly free from intolerance and bigotry. She has been the asylum for the religiously and politically oppressed of the world. Our attitude on religious matters has always been "sporting," as the English say. Americans may have jeered and tormented at times, perhaps, but rarely with real bitterness.

The greatest national receptions we ever gave were to Father Mathew, Cardinal Mercier and Colonel Lindbergh—two of them Catholics.

And in this campaign nearly all of the bitterness, intolerance and bigotry of Democrats and Republicans alike could have been avoided if the truth about the Eighteenth Amendment had been known from the first.

The modern prohibition movement began in Ireland in the middle of the last century with Father Mathew, an inspired Catholic priest. He had the vision to see that states and even nations were on the eve of destroying the traffic in alcohol.

After more than four million Irish had made the vow of total abstinence he came to America and conducted great revivals at which more than six hundred thousand Americans of all creeds took the pledge. This was in 1849 and 1850.

He inspired Abraham Lincoln who later stumped Illi-

nois for state-wide prohibition. And General Neal Dow, who made Maine the first dry state.

Father Mathew had as a friend and co-worker, in his amazing crusade, a Quaker preacher, William Martin.

America, though at that date fully ninety per cent. Protestant, received this humble priest as though he were an emperor. By resolution of Congress he was admitted to a seat on the floor of the House of Representatives.

The famous Henry Clay paid him this reverence: "The resolution is but a merited tribute of respect to a man who has achieved a great social revolution in which no blood has been shed, a revolution which has caused no bitter tears of orphans or widows to flow, a greater revolution perhaps than has ever been accomplished by any benefactor of mankind."

General Sam Houston followed with: "Father Mathew goes not with the torch of discord, but with a bond of peace. I, sir, am a disciple; I need the discipline of reformation, and I embrace it; and would that I could enforce the example upon every American heart that influences or is influenced by filial affection, conjugal love, or parental tenderness. There is love, purity and fidelity inscribed upon the banner which he bears. I bid him welcome."

The famous clergyman, William Ellery Channing, said of him in Boston: "Our exertions for the suppression of intemperance sink into nothing when compared with the incredible work now in progress on the other side of the ocean. History records no revolution like this.

Father Mathew ranks far above the heroes and statesmen of the times. However, as Protestants, we may question the claim of departed saints, here is a living minister, if he may be judged by one work, who deserves to be canonized, and whose name should be placed in the calendar not far below apostles."

He was the guest of the White House and of all of our cities. He stirred America even more deeply than he had stirred Scotland, Ireland and England. And the momentum he gave it carried prohibition on to realization in the Eighteenth Amendment to the Constitution.

It is almost impossible to realize that this humble Irish priest was the foremost figure of the English-speaking world in the middle of the last century.

Not only have all great Protestant leaders followed in his footsteps but all the great spiritual leaders of his church in modern times have championed his cause—Popes Gregory XVI, Pius IX, Pius X, Pius XI and Leo XIII, and Cardinal Manning, Archbishop Spalding, Archbishop Keane, founder of the Catholic University of Washington, Archbishop Ireland, one of the best loved of American Catholics, Cardinal McCabe and a score more of the greatest minds in the Catholic Church.

Leo XIII wrote, "Let pastors do their best to drive the plague of intemperance from the fold of Christ by assiduous preaching and exhortation, and to shine before all as models of abstinence, so that the many calamities with which this vice threatens both Church and State, may be averted."

Cardinal McCabe: "Drink is the source of nearly all our poverty, nearly all our crimes. It is the beginning and the end of nearly all our afflictions and humiliations, and it is dragging hundreds, nay thousands of Irish men and Irish women down into hell."

Pope Pius X: "Following the example of our predecessors and especially the latest among them (Leo XIII) who seemed to consider the abuse of strong drink the greatest enemy of Christ's teachings and commands, we heartily approve the work of the Catholic Total Abstinence Union. It is our hope that not only bishops, priests and men of religious orders, but the rest of the faithful, also, may express their appreciation of the Catholic Total Abstinence Union by becoming members of it. . . . Let Catholics be in the front ranks in the fight against Alcoholism."

Archbishop Spalding: "As to the right of the State to prohibit, there can be no question, since the right to suppress crime involves the right to suppress its chief cause."

Cardinal Manning: "The chief bar to the working of the Holy Spirit of God in the souls of men and women, is intoxicating drink. I know of no antagonist to the Holy Spirit more direct, more subtle, more ubiquitous. The drink trade is our shame, scandal and sin, and unless brought under by the will of the people, it will be our downfall. The ever-increasing alcoholism is the open wound from which the race may bleed to death."

And now, the beloved Archbishop Ireland, gentleman,

scholar and saintly priest: "We have seen there is no hope for improving in any way or form the liquor traffic; there is nothing now to be done but to wipe it out completely. The State alone can save us. Would God place in my hand a wand with which to dispel the evil of intemperance, I would strike the door of every saloon, of every distillery, of every brewery, until the accursed traffic should be wiped from the face of the earth."

To answer that these great leaders merely favored temperance in the use of alcohol and not total abstinence and the abolition of the whole liquor traffic is not only irreverent sophistry but treason to the Catholic Church.

We now come to Abraham Lincoln, the greatest Anglo-Saxon, and to Cardinal Mercier, of Belgium, one of the most dramatic figures in Christianity since the Master. Mercier with the intellect of St. Thomas Aquinas, the humility of St. Francis of Assissi, and the soul of Joan of Arc. If ever two great men were cast in a common mold they were Lincoln and the great Cardinal, in their patience, tolerance, humility, charity, courage and gentle humor. Mercier, the saintliest, most inspiring figure of the World War. Mercier, whom all Protestant America welcomed and reverenced, for his love, courage and spirituality.

Lincoln wrote: "The saloon has proved itself to be the greatest foe, the most withering, blighting curse that has found lodgment in our modern civilization, and that is why I am now and always a political prohibitionist."

And the great Cardinal said: "If universal prohibition could be introduced, more lives would be saved than by universal disarmament. Alcohol kills more men than war and does it more dishonorably. When a man dies in war, a life is snuffed out; but when the drinker has ceased to live, the evil continues to exist."

The Eighteenth Amendment of the Constitution of the United States of America seeks to abolish the traffic in alcohol. The leadership of the great Christians I have named and countless others put it there. To treat it with disrespect, bravado or irreverence is treason to their teaching. It represents the finest humanitarian thought in civilization. It was a step to free the souls of men and women as the Emancipation Proclamation was to free men's bodies.

I affirm that the American citizen is the most tolerant one on earth. But we must realize that his loyalty to prohibition is as deep seated as his religious convictions themselves. To be called a fanatic or a bigot for this loyalty and to have prohibition cursed as a "damnable affliction," arouses a fighting spirit in his heart.

He sees all those elements which have debauched our literature and the stage, which jeer at sobriety and chastity, and are threatening the very foundations of our national life, aligned with the Tammany candidate and with the social froth and dregs in opposition to the Eighteenth Amendment. He resents that the candidate of a great party should make assault upon the Eighteenth Amendment after the party itself had spoken in favor of

prohibition; he laments that some well-meaning and genuinely patriotic people have been deceived into aiding the forces of opposition to prohibition aligned with the Governor of New York by his falsely branding the prohibitionist's opposition to him as opposition to his church.

He does not know, as many Catholics do not know, that prohibition was cradled in the Catholic Church and fought for by every great religious leader in that church and in every other church for nearly a hundred years.

The prohibitionist has been persecuted and pilloried by every precocious or unprincipled editor in America, and taunted and insulted by the very leaders of the Democratic party itself. And because he has stood his ground he is called to task by a shallow intelligentsia and those who hurl the epithet of bigot for political effect.

Loyalty to prohibition is not disloyalty to the Catholic Church, as the politicians whisper, but loyalty to God, America, humanity and the great Catholic leaders who conceived it and fought to make it a blessed reality.

Because of my unflinching opposition to those professional Catholic politicians who have sought to mislead their co-religionists into the belief that loyalty to prohibition is little short of heresy, I have been attacked as a bigot by the wet newspapers of America.

Every act and utterance of my life proves that I hold both love and reverence for the high Christianity of the great Catholic leaders who began the modern prohibition movement and helped carry it on to a realization. A

religion that produces saints like Father Mathew, Pius X and the immortal Mercier needs no defense from Governor Smith or Mr. Raskob.

When two hundred thousand Scots greeted Father Mathew in Glasgow he responded with these words, "It is not likely that we all can have unity of faith, but we all can meet in unity of affection."

There you have the love and tolerance that are the heart and soul of all true religion.

Because with an emotion common to most Americans *I love tolerance and yearn to see it a reality* in our national life, I look forward with hope and gladness for the election of Herbert Hoover. His life radiates true toleration, kindness and high idealism. Under his example and leadership mutual forbearance and understanding between Catholic, Jew and Protestant and racial groups in America will reach new and higher levels.

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